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TABLE OF CONTENTS

Editorial i

Coordinator iii

M K Nambyar SAARCLaw Centre Profile iv

Articles

Regionalism in the Asian Century: A SAARC Perspective 01
Mssc. Marko Juutinen

Status of Islands, Archipelagos and International Straits under the United Nations Convention on the Law of the Sea 21
Saachi Kapoor

Implications of Recidivism in Criminal Jurisprudence 39
Nupur Thapliyal

Arresting Crimes of Aggression: Contouring the Conditions, Battling Critics and Punishing its Authors 49
Raavi Mehta

Doctrine of Hot Pursuit: Problems of Enforcement 59
Ishan Seth

Equivocal Indo-Naga Conflict 71
Shimreichon Awungshi Shimray

Access to Justice and Judicial Pendency: Confluence of Juristic Crisis 83
Dr. T S N Sastry

Commentary

South Asian Rivers: Conflicts and Cooperation 119
Jyoti

Book Review

V J Taraporevala, Law of Intellectual Property, II Edition, Published by Thomson Reuters, New Delhi, 2013. 125
Dr. Manish Yadav

News Reports

Friendship is a flowing river If our commitments are honest, India and Bangladesh can achieve many things that are beneficial to our people 135
Sheikh Hasina, The Hindu, India, April 07, 2017

Pakistan, India resume talks to bridge differences over Indus Waters Treaty 141
The Express Tribune, Pakistan, March 20, 2017

BIMSTEC a sunny prospect in BRICS summit at Goa 144
The Hindu, India, October 15, 2016

Documentation
Goa Declaration at 8th BRICS Summit 149
October 16, 2016

Guidelines for Authors 179

Editorial

SAARC once fell victim to intra-regional political feuds. As several times in the past, the Islamabad summit scheduled to be held in 2016, was cancelled due to the simmering Indo-Pak hostility over the all too well-known cross border terrorism issue. Indian diplomacy succeeded in mobilizing other members of the regional group to stay away from the summit. But Indian effort to isolate Pakistan at the BRICS-BIMSTEC Summit held at Goa in October 2016 did not succeed as India could not convince China and Russia, the other two key members of the BRICS to agree on a Pak-centric resolution calling Pakistan to take immediate and necessary steps to control the terrorist activities carried out from her territory.

Notwithstanding India's failure to isolate Pakistan at the Goa Summit, an important fallout of this summit was that it brought BIMSTEC (Bay of Bengal Initiative for Multi-sectoral and Economic Cooperation) to the center stage. BIMSTEC formed in 1997 by five of the countries representing the Bay of Bengal region, later enlarged to seven with land-locked Bhutan and Nepal also joining this sub-regional group, had rather remained passive since its inception. Several factors could be accounted for the poor performance of the BIMSTEC, but the leading among them being that most of these countries like Sri Lanka, Myanmar, and Nepal were preoccupied by their domestic political crises. India's lack of interest in this sub-regional group was another reason for its lack of direction and vision. As India's foreign policy focused preeminently on the Asia-Pacific (now called Indo-Pacific) region ('arc of prosperity') BIMSTEC failed to receive due attention.

The Goa Summit of BRICS was converged with that of BIMSTEC so as to build greater synergies between the two groups, one trans-regional and the other sub-regional. Laudable though such

combined inter-group conclave and the stated objectives of forging close links between the two, its major intent of course was India's diplomatic objective of promoting South Asian cooperation minus Pakistan – a non-Pak approach to regional cooperation. It needs to be seen whether the BRICS-BIMSTEC summit would endure the vicissitudes of global economic and political dynamics and sustain the Goa spirit, or will, like SAARC, fall prey to regional geo-political rivalries.

In any case, SAARC should continue. As the only South Asian regional cooperation group (as against a multitude of such groups in Africa, Southeast and East Asia), it needs to be sustained and strengthened. For all its failings, SAARC remitted the region and its people with certain positive gains.

Prof. (Dr.) P.V.Rao
Editor-in-chief

Coordinator

Dark clouds overshadow the prospects for sustaining the spirit of regional cooperation in SAARC. Despite the early hopes of favourable political climate in the region raised by Indian prime minister Narendra Modi's 'neighbourhood first,' slogan, Indo-Pak standoff over the chronic issue of cross-border terrorism and the subsequent cancellation of the Islamabad SAARC Summit, pushed the SAARC into a crisis. In an era of rapid political and economic multilateral alliances to integrate countries across the Asia-pacific region through several networks, SAARC and the South Asian region cannot afford undermine the spirit and causes of SAARC, the only regional platform available to the countries of the region. Nor is it desirable to initiate counter moves to sideline SAARC with other regional substitutes. BIMSTEC, the sub-regional group of Bay of Bengal countries, passive for a long time, is being projected as an alternative regional forum vis-à-vis the SAARC. India is making such effort but it cannot be a right step as any regional group without Pakistan, region's second largest country, cannot claim to be a legitimate forum to debate regional issues and problems. SAARC should continue and should receive the fullest support and cooperation of all its eight countries to keep it going, notwithstanding its slow progress. Hopefully, regional leadership will rise to the occasion and demonstrate the required political will to save SAARC and sustain its identity as South Asia's collective regional association

Prof. (Dr.) V. Balakista Reddy
Professor of Law, Registrar &
Coordinator
M K Nambyar SAARCLaw Centre
NALSAR University of Law

M K Nambyar SAARCLaw Centre Profile

Established in 2003 by Padma Vibushan K K Venugopal in memory of his father, the M K Nambyar SAARCLaw Centre (MKNSLC) is unique in its aim to study legal issues pertaining to SAARC countries and create networks and spaces for engagement amongst the peoples of these countries. The primary aim of the Centre is to encourage and enhance legal research in the discipline of SAARC studies. MKNSLC follows legal developments relevant to SAARC countries keenly and strives to spread awareness about the same by publishing legal journals and newsletters. MKNSLC also conducts conferences, seminars, workshops at national and international levels. These conferences not only seek to address the key legal issues as identified by scholars time to time but also create platform for learning communities on South Asian developments. The proceedings of each conference are regularly compiled and after through editing published as monographs/books by the Centre.

In pursuit of its objectives MKNSLC has over the years sponsored several academic and research programmes including conferences, seminars, newsletters, lectures and workshops. Monthly Seminars are encouraged along with student presentations and lectures. The Centre had the privilege of its monthly seminars being addressed by eminent personalities like Padma Bhushan Shri K. Padmanabaiah, IAS (former Home Secretary, Government of India), Amb. A. N. Ram, IFS (former Ambassador, Government of India), Prof B. S. Chimni (JNU) and Dr. P. S. Rao (former Additional Secretary and Legal Advisor to the Ministry of External Affairs, Government of India.), Amb. Sudhir T Devare, (Secretary, Ministry of Foreign Affairs) to name a few. Through these regular activities mentioned above the Centre is making a positive contribution to the process of resolving bilateral disputes in the SAARC region through peaceful means.

MKNSLC consistently endeavours to bring together the legal and non-legal communities from SAARC region for promoting closer understanding, exchange of ideas and dissemination of information. It is hoped such sustained intellectual activity undertaken by the Centre will help foster co-operation among the peoples of South Asian region.

MKNSLC has its own well equipped infrastructure that includes one audio visual conference hall with a sitting capacity of 250 persons, 3 seminar halls, one moot court room and judges' lounge.

Centre's Objectives

- To elevate a MKNSLC gradually into an Advanced Centre for Regional Legal Studies
- To promote Mooting activities on contemporary issues of relevance to SAARC region
- To conduct training programmes for Law Teachers and judicial officials of the SAARC Region
- Annually organise SAARCLAW National and International Conferences and seminars
- To sponsor research projects/working papers on SAARC issues
- To patronize publications through Newsletters, journals and Books on SAARC
- To promote faculty-student exchange programme with SAARC Universities

Recent Conferences and Seminars Conducted

Two day International Conference on Water Sharing in SAARC Region: Legal Issues and Challenges on March 25-26, 2017: The M K Nambyar SAARCLaw Centre, NALSAR University, Hyderabad is organized two day International Conference on 'Water Sharing in the SAARC Region: Legal Issues and Challenges' on March 25-26, 2017 at NALSAR University campus.

Ambassador A N Ram, Former Secretary, Ministry of External Affairs, Government of India & Former Ambassador of India inaugurated the programme. Prof. B C Upreti, Member, Prime Minister's Eminent Persons Group, Government of India and a very renowned South Asian scholar was the Key Note Speaker for the programme. Prof. Saligram Bhatt, Adjunct professor, NALSAR and Prof. G S Sachdeva, Adjunct Professor, NALSAR were the Guest of Honour for the occasion.

The proposed Conference aimed at debating the wide range of issues relating to regional water resources such as the profiles of South Asian water bodies, sources of water-sharing disputes, legal conventions/instruments, of water management, major issues and disputes, water as a source of regional energy security, sustainable and ecological dimensions of water resources. It was intended to bring together leading academicians, students, specialists, policy analysts, defense personnel and think tanks from India and abroad, SAARC states in particular.

The conference had received a huge response from Universities across the country as well from other SAARC Countries including Professors from Bangladesh and Sri Lanka. In India, we had many professors, advocates and students as participants from the

institutions and Centres working in the area of SAARC including, South Asian University (SAU), New Delhi, Jawaharlal Nehru University (JNU), New Delhi, South Asia Consortium for Interdisciplinary Water Resources Studies (SaciWATERs), Hyderabad, etc.

Comparative Constitutional Law Perspectives from November 21-26, 2016: M K Nambyar SAARCLaw Centre in coordination with the Centre for Constitutional Law, Public Policy and Governance, NALSAR have successfully conducted a one week course on Comparative Constitutional Law Perspectives from November 21-26, 2016 at NALSAR Campus.

The seminar aimed at improving the understanding of comparative constitutional law and its use in the interpretation of the Indian Constitution for students interested in constitutional law. The theme includes The program was based upon the themes including National constitutions and globalizing legal order, Equality and non-discrimination in comparative constitutions, Socio-economic rights and comparative perspectives, South Asian Constitutionalism and Constitutional Courts and the Constitution. Hon'ble Justice B P Jeevan Reddy, Former Judge, Supreme Court of India and Former Chairman, Law Commission of India inaugurated the program. Lectures by learned scholars like Prof. M P Singh, NLU, Delhi, Prof. Ishwara Bhat, NUJS, Kolkata, Dr. Alexander Fischer, Jindal law School, Sonepat, Prof. G B Reddy, Osmania university, Hyderabad, Dr. Nicole Toppervein, Ximpluse, Switzerland, and Prof. Faizan Mustafa, NALSAR, Hyderabad were planned around these and other related themes to provide expert insights into the merits and demerits of the use of comparative constitutional material.

A total number of 59 participants from Universities across the country and SAARC Countries especially Nepal attended the six days program out of which 54 participants were from India and 5 participants were from Nepal.

Ongoing Activities and Work plan

International Conference on Water Sharing in SAARC Region: Legal Issues and Challenges, March 25-26, 2017: The Centre is organizing two day International Conference on 'Water Sharing in the SAARC Region: Legal Issues and Challenges' from March 25-26, 2017 at NALSAR University campus.

The proposed Conference aims at debating the wide range of issues relating to regional water resources such as the profiles of South Asian water bodies, sources of water-sharing disputes, legal conventions/instruments , if any, of water management, major issues and disputes, water as a source of regional energy security, sustainable and ecological dimensions of water resources. It is intended to bring together leading academicians, students, specialists, policy analysts, defense personnel and think tanks from India and abroad, SAARC states in particular.

Book Project: *a. SAARC in 21st Century* - The Editorial Committee of SAARCLAW Centre has taken an initiative to sponsor a two volume book project on SAARC under the tentative title "SAARC in 21st Century". First volume deals with the constitutional aspects of SAARC and its members and the second volume focuses upon the contemporary legal issues in South Asia. Eminent Scholars from institutions across the country as well as SAARC countries have been invited to join the project. The project has received a very good response from the participants. The Editorial Team have finalised 40 contributors and have started receiving submissions from them as well. The Team is in the

process of editing the articles and is expected to complete the project by September 2017.

b. South Asian Trans-boundary Rivers: Issues in Sharing Waters - MKNSLC also proposes to publish a book on " South Asian Trans-boundary Rivers: Issues in Sharing Waters." This book will be a compilation of the proceedings of the International Conference organized by the Centre on *Water Sharing in SAARC Region: Legal Issues and Challenges* to be held on March 25-26, 2017 at NALSAR Campus. This will be second of the book series sponsored by the Centre.

M K Nambyar SAARCLaw Journal (MKNSLJ): The Centre publishes regularly a bi-annual M. K. Nambyar SAARCLaw Journal (MKNSLJ); peer reviewed with ISSN (No.2346-8646) accreditation. The Centre is releasing its fourth volume during the International Conference on *Water Sharing in SAARC Region: Legal Issues and Challenges* scheduled on March 25-26, 2017 at NALSAR University of Law.

Occasional Papers: For the first time in its history, the Centre by way of enhancing its research Activities has decided to publish Occasional Papers. Eminent Scholars of proven research experience will be invited to contribute a well-documented scholarly essay on themes relevant to the Centre's objectives. The centre is already in touch with some such scholars who have positively responded to the invitation. To begin with each year it is proposed to publish a minimum of three occasional papers.

SAARC Eminent Person's Lectures: Over the past few years the Centre has been actively hosting Special Lectures by Scholars, Legal professional, Diplomats and Policy makers. Going by the extraordinarily good response to these lectures by the NALSAR teaching and student communities, the Centre wants to continue

the same activity by inviting on a monthly basis a scholar of eminence to address the NALSAR Community.

M K Nambyar Annual Memorial Lecture: The Centre is seriously considering organizing every year a memorial lecture in the honour of late M K Nambyar, father of Padma Vibhushan K K Venugopal, Senior Acvocate, Supreme Court of India. On getting approval for the same programme from the Patron, the centre will decide the month and the person to deliver the lecture.

SAARC online research activities: *MKNSLC Website* – The Centre is in the process of updating its own website as a sub domain of the University website thereby providing a gateway to all other forms of communication and a primary medium through which the activities and research of the Centre would be able to reach the Academicians, scholars, etc.

MKNSLC blog - Centre has created a dedicated BLOG (http://saarclaw.blogspot.in/) which can continuously address debates on on-going issues of concern of the region. The Centre is in the process of editing the scholarly content to be uploaded on it. It aims to publish at least two articles/commentaries/media coverage/case reports every month.

Regionalism in the Asian Century: A SAARC Perspective

Mssc. Marko Juutinen[*]

This paper has one purpose to understand the changing nature of regionalism and the challenges facing SAARC. To explain this objective, the chapter has three tasks. First, it seeks to demonstrate that regionalism in the 21st century follows different logic in a different international setting that regionalism in the 20th century. Second, it proposes a traditional Indian perspective to foreign policy as a framework for analysing regionalism(s) in the international setting of 21st century. Third, it situates SAARC into this analytical framework.

European integration is a classic example of 20th century dynamics between regionalism and multilateralism. It was launched as an integral part of the Marshall plan to rebuild Europe. Marshall Plan was one key element of the post-war construction of the international order accompanied by founding of multilateral financial institutions and the (failed) attempt to launch an International Trade Organization. US influence in both European integration and multilateral processes was direct and strong ensuring institutional conformity on both levels. As European integration grew deeper and broader, the Union became itself an active agent at the multilateral institutions.[1]

During the 20th century, European integration did not appear to be a singular case. Larry Summers,[2] for example, wrote in 1991

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[*] Doctoral Researcher at School of Management, University of Tampere, Finland.

[1] Robert O'Brien and Marc Williams, Global Political Economy: Evolution and Dynamics (Hampshire: Palgrave Macmillan, 2007), 119.

[2] Lawrence Summers, "Regionalism and the World Trading System," in, *Policy Implications of Trade and Currency Zones, ed. Lawrence Summers* (Kansas City: Federal Reserve Bank of Kansas City, 1991).

that trade regionalisms are conducive to economic globalisation because they have a common framework with trade multilateralism (GATT and its successor WTO). Other regional initiatives like Association of South East Asian Nations (ASEAN), South Asian Association of Regional Cooperation (SAARC), Mercado Comúndel Sur (Mercosur) did indeed conform with the multilateral principles of the GATT and later the WTO, although their level of institutionalization and depth of integration is shy of the European example.[3]

On the multilateral level, US promoted deepening and broadening of economic integration at institutionalisation of global trade. Founding of World Trade Organization in 1994 after the successful completion of Uruguay Round was an important outcome of US leadership, achieved together with the hegemon and its allies, Canada and Japan the EU.[4] It was met with enthusiasm and some saw it as evidence of Fukuyama's controversial thesis of the end of history. To describe US role and influence in world politics of the 20th century, John Ikenberry[5] has employed the term 'hegemonic multilateralism'. It is based on the notion that US leadership and supremacy was a decisive feature of the 20th century dynamics between regionalism and multilateralism.

In 21st century, the rise of Asia in general and China in particular have changed this basic setting. Plurality of power and world views now exist where US hegemony and Western

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3 *Supra* note 1, p. 119, 130; Peter J. Katzenstein, "Regionalism in Comparative Perspective," *Cooperation and Conflict,* vol. 31, no. 2 (1996):134.

4 Robert Gilpin, *Global Political Economy. Understanding the International Economic Order* (Princeton: Princeton University Press, 2001), 222.

5 John Ikenberry, "The Future of Multilateralism: Governing the World in a Post-Hegemonic Era," *Japanese Journal of Political Science* vol. 16, no. 3 (2015): 399–413.

universalism existed before. This not only challenges the formerly predominant understanding of a mutually enforcing relation between multilateralism and regionalism, but also how we conceptualize, understand and analyse regionalism.

The Challenge of 21st Century Regionalism

Decline of the West

In the context of 'hegemonic multilateralism', many saw regional process as 'building blocs' of global integration.[6] However, Asian Century poses a fundamental challenge to this thesis. Two factors explicate the challenge. First one is US power and second the appeal of liberal institutions. More specifically, the first factor is the ability of the US to maintain global leadership and thus to give the ensuing pluralism some semblance of hegemonic multilateralism. Already during the 1990s with the emerging China threat theory[7] American realists like Zbigniew Brzezinski[8] argued that forging of alliances should be made the key objective of US foreign policy. This resonates well with US pivot Asia policy, transatlantic integration and Mega-Regional Trade Diplomacy under the Obama administration.[9] However, it is questionable whether US

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6 E.g. Louise Fawcett and Andrew Hurrell, *Regionalism in World Politics. Regional Organization and International Order* (Oxford: Oxford University Press, 1995).

7 See Emma Broomfield, "Perceptions of Danger: the China threat theory," *Journal of Contemporary China* vol. 12, no. 35 (2003): 265–284.

8 Zbigniew Brzezinski, *The Grand Chessboard. American Primacy and its Geostrategic Imperatives* (New York: Basic Books, 1997).

9 Daniel Hamilton, "TTIP´s Geostrategic Implications," in, *Theo Geopolitics of TTIP: Repositioning the Transatlantic Relationship for a Changing World, ed. Daniel S. Hamilton* (Washington, DC: Center for Transatlantic Relations, 2014); Marko Juutinen and Jyrki Käkönen, *Battle for Globalisations? BRICS and US Megaregional Trade Agreements in a Changing World Order* (New Delhi: Observer Research Foundation, 2016).

president Donald Trump's head will be turned in favour of them. Trump has promised that US will resign from the Trans-Pacific Partnership (TPP) the very first day of his presidency. And he did it.

The second factor which is less influenced by the global power shifts (and irrelevant to the foreign policy of Donald Trump's administration) is the absorption of liberal political and economic institutions by the rising powers. Echoing the optimism of Fukuyaman type, former US President Bill Clinton[10] believed that China's accession to WTO would lead it to the path of integration and reformation: "Bringing China into the World Trade Organization (WTO) on the strong terms we negotiated will advance critical economic and national security goals. It will open a growing market to American workers, farmers, and businesses. And more than any other step we can take right now, it will draw China into a system of international rules and thereby encourage the Chinese to choose reform at home and integration with the world."

China has indeed played by the rules of the WTO.[11] At the same time, China has not embarked on the path of internal reform or become an agent of further deepening of trade liberalization (on US terms). Even though there is no denying that the Middle Kingdom is integrated with the world as it emerges as a key promoter of multilateral and regional integration – perhaps more successfully so than US itself, it appears to entertain no

[10] Clinton, William J. (2000), 'Letter to Congressional Leaders on Permanent Normal Trade Relations Status With China', in Weekly Compilation of Presidential Document Vol 36(4), Office of the Federal Register, National Archives and Records Administration, January 24, 2000..

[11] James Scott and Rorden Wilkinsonj, "China Threat? Evidence from the WTO," *Journal of World Trade* vol. 47, no. 4 (2013): 761–782.

desire to become integrated as a liberal democracy nor is promoting a singular globalization of liberal democracies.

While the founding of the WTO in 1994 encouraged optimism in favour of the liberal order, the subsequent Doha Round of negotiations launched in 2001 soon replaced optimism with pessimism. Spanning over almost two decades, the Doha Round has been stalled by persistent conflicts between major commercial states and between the developed and developing countries.[12] In the new pluralist world order US has not been able to advance the agenda for economic globalization on the multilateral arena not even together with EU, Japan and Canada. At the same time and due to the resistance of the developed countries, the WTO has neither been able to accommodate the development concerns of a majority of its member states.

In consequence, US inability to forge alliances and through them to curb the growing might of Asian powers explains one aspect of the new pluralist international setting. Another factor is the weak appeal of liberal institutions among the non-Western powers. Regionalism in the 21st century thus takes place in a post-hegemonic and increasingly Westphalian framework that is fundamentally different form the 'hegemonic multilateralism' of 20th century.

The problems of multilateral decision making in the context of the WTO offers one potential explanation for regional processes in the 21st century.[13] Being unable to agree at multilateral level,

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[12] *Supra* note 1, p. 161; Jagdish Bhagwati and Pravin Krishna and Arvind Panagariya, "Where is the World Trade System Heading?," in, *Power Shifts and New Blocs in the Global Trading System, ed. SAnjaya Baru and Suvi Dogra* (Oxon: Routledge, 2015), 26–30.

[13] Marko Juutinen, "Regional Trade Agreements: Strike at Multilateralism," *Occasional Paper 93* (New Delhi: Observer Research Foundation, 2016); *supra* note 9.

states shift their concern to regional level where they can proceed with a group of like-minded states. Indeed, in the aftermath of the stalled Doha Round, US trade representatives Robert Zoellick and Susan Schwab were quoted[14] as saying, "[w]e are perfectly capable of moving ahead on the bilateral track". While US did successfully pursue mega-regional trade diplomacy leading to the completion of TPP-negotiations in 2015, Trump's election has cast a dark shadow of doubt on at least the current version of the agreement. In addition to US, other states also have the same capacity (and the capacity to conclude agreements). Russia has its own regional process, China and India their own and Latin America theirs. EU and Canada have theirs. In consequence, the pluralist international order has already lead to plural paths to economic liberalization – plural globalisations.

The most important of these new processes is Regional Comprehensive Economic Partnership (RCEP) currently negotiated between ASEAN, China, India, Japan, Australia, New Zealand and South Korea. The sixteen member countries contribute to about one-third of global Gross National Product (GDP) and make up almost half of the world's population. To gain an idea of the RCEP it is useful to compare it shortly with the TPP, (even though its fate under Trump administration is unclear). TPP was finalized in October 2015 between the US and eleven Pacific States. It also contributes about one-third to world GDP but its population is only about 10 percent of world population. While neither China nor India were members of TPP—where the US is the great leading power—Japan, Australia, South Korea, New Zealand and four of the ten ASEAN members are. Thus there is overlapping membership

[14] *Supra* note 12, Bhagwati *el al.*, p. 18; Shalendra D. Sharma, "Going beyond Cancun: Realizing the development promise of the Doha Agenda," *Global Economic Review* vol. 33, no. 2 (2004), 24.

but with regard to the great powers, TPP and RCEP are exclusive.[15]

Even more importantly, TPP and RCEP differ in scope and quality. TPP is a WTO plus agreement covering all the WTO agreements, with a purpose to a) increase market access by eliminating existing tariff barriers, expanding services commitments and opening public procurement markets, b) streamline regulatory differences that WTO framework allows to persist by regulatory cooperation and further developing of standards like intellectual property rights and finally incorporating c) the contested Singapore issues and d) new non-trade issues like labour and environmental chapters. EU-US trade deal, Transatlantic Trade and Investment Partnership (TTIP), (which like the TPP is on hold), and the EU-Canada trade deal, Comprehensive Economic and Trade Agreement (CETA), which is likely to be ratified in January 2017, are all of the same WTO-plus quality. RCEP, on the other hand, will likely be more limited with regard to market access, regulatory cooperation, standards like IP-protection, and leave out the non-trade issues entirely.[16] Other recent non-western trade initiatives like the Russia-led Eurasian Economic Union (EAEU) portray similar differences. The difference also applies on ASEAN and SAARC.[17]

Regionalism of the 21st century thus appears to be a qualitatively different phenomena than regionalism (and new

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15 *Supra* note 13.

16 *Supra* note 13; Pascal Lamy, "Is trade multilateralism being threatened by regionalism?," in, *Power Shifts and New Blocs in the Global Trading System, ed. SAnjaya Baru and Suvi Dogra* (Oxon: Routledge, 2015), 71–74.

17 Eero Palmujoki, "ASEAN's RTAs: Relevance to India," in, *India and ASEAN, Partners at Summit, ed. PV Rao* (Hyderbad: KW Publishers, 2008); also *supra* note 3, Katzenstein, p. 134.

regionalism) of the 20th century and early 21st century. In order to attempt at definition of the new phenomena, one would need to rethink the former conceptualization in the new context. As the previous section argued, the 'old regionalism' took place under the auspices of US global leadership – in the context of hegemonic multilateralism. Thus, if and when regionalism of the 20th century evolved under a hierarchical order, the nature of which was given first by the US and then by the US and its major allies, then the dissolution of this order implies,

(I) that regionalisms are separated from a hierarchical order,

(II) that regionalisms thus can evolve to different direction for different purposes,

(III) that hence, the concept and function of regions becomes unknown, and

(IV) that the dynamics between multilateral, regional and subregional processes becomes unknown.

Towards a Framework of Analysis

Rethinking regionalism

The historico-political context of mainstream political science and international relations shadows the understanding of the new and emerging dynamics of regionalism. John Hobson[18] for example has argued that international relations in particular has grown out of the needs of US foreign policy interests. In consequence, the analytical tools and ontological underpinnings

[18] John Hobson, *The Eurocentric Conception of World Politics* (Cambridge: Cambridge University Press, 2012).

of mainstream IR are context specific. Let me briefly rethink the case of European integration with this idea in mind.

At the background of European integration there are various factors, including the devastating effect of Westphalian rivalry between major European powers which culminated in the WWI and WWII. In addition to direct influence from the US, the European states shared the key objective of pooling state authority between the two main rivals, France and Germany, who, in addition to the political need (to maintain peace) and to outward pressure (US and the Soviet threat), also share a cultural history and whose political system and elites were comparably closely related. These different factors, that apply in the European context, are part of the mainstream definitions of regionalism.[19]

From this perspective it comes as no surprise that federalism, initiated by the political strong men like Jean Monnet and Robert Schuman and conditioned with the Marshall plan, rose as of the key theories for not only European integration but also transatlantic relations. The transatlantic federalist movement had in fact began already after the WWI and was supported by the American experiences with federal democracy and the influential political theory of Tocqueville's *democracy in America.*[20]

In this context statism, or state centrism, full sovereignty and plurality were no longer desirable setting of international order. Instead, the federal principle of pooled authority, of yielding state power in favour of common political institutions, was conceived of as the ideal type of political organization among

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[19] *Supra* note 3, Katzenstein, p. 129.

[20] Henning Meyer and Chris Luenen, *Transatlantic Economic Cooperation: A Reader* (London: Global Policy Institute, 2008).

states.[21] This federal principle very well resonates with European classical political theory as exposed by for example Thomas Hobbes. His argument in *Leviathan* was that individual freedom, order of society and more broadly, the basic framework for life, were only achievable through denouncing full liberty in favour of the sovereign, the state. In similar manner, international order based on the anarchy of states, is conceived of as the warlike and undesirable state, wherefrom the way is through federalising political power – through multilateral and regional processes.

Federalism in contrast is not part of Asian regionalism, old and new. SAARC for example, is strictly interstate cooperative organization were sovereignty and territorial integrity are two of its key values and organizing principles (i.e. in consensual decision-making). In similar manner, the BRICS, an association between Brazil, Russia, India, China and South Africa, also maintains that international order should be based on the values of sovereignty of equal states – not in federal principles as exposed by the American seminal author of federalism, Daniel Elazar.[22]

As a result, an analytical framework for studying regionalism in this Asian century would imply 1) incorporation and use of non-western perspectives, and 2) focus on perspectives that are fundamentally based on a the values of sovereignty and pluralism. For this reason this chapter now turns to Kautilya, Indian political theorists and as the legend says King-maker.

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[21] E.g. Daniel Elazar, *Constitutionalizing Globalization. The Postmodern Revival of Confederal Arrangements* (New York: Rowman & Littlefield, 1998).

[22] *Supra* note 9, Juutinen and Käkönen, p. 36

Kautilya's Foreign Policy

In foreign policy, Kautilya's unit of analysis is a King, whom he calls the Conqueror. He defines Conqueror as a king who, having excellent personal qualities, resources and constituents of his state, follows good policies". The Conqueror shall foremost be focused on promoting the welfare of his people. We read that "[in the happiness of his subject lies the king's happiness; in their welfare his welfare. He shall not consider as good only that which pleases him but threat as beneficial to him whatever please his subjects."[23]

In Kautilya's Mandala system of foreign policy, the maintenance and enlargement of King's power is the fundamental guideline of foreign policy, because the power of the King means success in pursuing the welfare and happiness of his people. In this context, the King does not denote the ruler personally, but the compound of the six constituent elements of the state. These are the king, the ministers, the fortified city, the countryside, the treasury and the army. The interest of the king then signifies the interest of the state or in modern terms the national interest. In translation by Dr. Rangarajan we read that "[t]he welfare of a state [ensuring the security of the kingdom within its existing boundaries and acquiring new territory to enlarge it] depend on [adopting a foreign policy of] non-intervention or over action. A policy which helps in the undisturbed enjoyment of the results of past activities is defined as non-intervention. An active policy is one which is designed to bring [new] initiatives to a successful conclusion."[24]

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[23] Kautilya, *The Arthashastra*, edited, rearranged and translated by L.N. Rangarajan (Haryana: Penguin Books, 1992), 520, 125.

[24] *Supra* note 23, p. 525, 506, 518.

Thus, conquest for the sake of conquest is not the purpose of Kautilya's foreign policy, even though Kautilya analyses the policies through a Conqueror. The purpose of the Conqueror nevertheless is not to seek to fulfil his desire to dominate others. Instead, it is to maintain the welfare of the King (meaning its six constituencies). This notion is further strengthened through the dharmic lenses that Kautilya conceptualizes the society – which gives the King (as a ruler) a normative duty to be a just King. This normative aspect is not present in Machiavelli's virtues of a King. Instead, the virtues as normative duties were extrapolated by ancient Greek philosophers like Plato and Aristotle at about the same time as Kautilya was active (about 400 B.C.). However, because the welfare of the King depends on the six constituencies, and rise in population, draught or internal calamities affecting them, the interest of neighbours are intertwined and conflictual. That is why immediate neighbours are considered enemies.

To ensure the welfare of the Kingdom, the King will need to be powerful. According to Kautilya, the objective of power is happiness.[25] In similar manner to the Chinese Sun Zi, Kautilya distinguishes power into three components, intellectual strength (which provides good council), strong army and prosperous treasury provide for physical strength, and valour builds the psychological bases of the use of them both or the energy and morale.[26]

These three component connect to the six constituents of the King. The King is powerful, or has intellectual strength, if his personal qualities and dexterity, those of his ministers and subjects operating the army and the conducting the productive

[25] *Supra* note 23, p. 525.

[26] K.N. Ramachandran, "Sun Zi and Kautilya: Towards a Comparative Analysis," *Strategic Analysis* vol. 38, no. 3 (2014): 393.

work, are sound and of good nature. The King has physical strength if the rulers and subjects are productive and have enough productive lands (cultivated lands, elephant forests etc.). In addition, to have physical strength, depends on the intellectual use of what is given to each one. Finally, the King has physical strength the more the he, his ministers, army and subjects are of good morale, are bound together by the bonds of respect, appreciation and love. Kautilyan national interest thus is a component of the welfare, happiness and power of the King and its six constituents. The fundament of any King's foreign policy derives from this origin.

The playground of Kautilyan foreign policy is between the so called circle of Kings. Each King is surrounded by other Kings, some of whom are weaker, some of whom are equal in strength and other qualities, and some of whom are stronger. The immediate neighbours are the enemies, because with them the national interest most easily collides. The allies are those with whom the King does not share borders. In addition to enemies and allies, Kautilya takes into consideration the qualitative differences in power. If the qualitative differences in power are great enough, then a King with shared border becomes a Middle King. Middle King not only is the most powerful of Kings neighbours, it also shares borders with the Conqueror and the enemy. In consequence, foreign policy calculations of each King are based on an analysis of his own circle of Kings, the circle of Enemy, the circle of the Middle King and the circle of the neutral King.[27]

Kautilya lists six foreign policy methods. Making peace is the first one. States commit to peace through an agreement with specific conditions. Waging war is the second method and should be used by a superior King against his weaker enemy.

[27] *Supra* note 23, p. 526–527,

Staying quite or being indifferent is the suitable course of action when progress cannot be made neither through war nor through peace treaties. Fourth method is preparing for war through augmenting one's power. Fight method is seeking protection from other Kings. The sixth method is a dual policy of war against one King and peace with another. Of these methods, peace is to be preferred, if "the degree of progress is the same in pursuing peace and waging war … [f]or, in war, there are disadvantages such as losses, expenses and absence from home".[28]

SAARC in the Regional and Multilateral Context

It is not advisable to employ and apply classical texts directly to analysis contemporary global dynamics, it is yet reasonable to relate the Kautilyan political discourse to South Asian regional political context.[29] In the case of Kautilya, the concept of enemy and neighbour requires extra attention because they would seem to preclude regional cooperation. However, Kautilyan concept of enemy does not imply that enemy would have bad qualities. It refers to no personal or national characteristics of the neighbour but to conflicting interest between two neighbouring states; the severity of enmity is set through the severity of conflicting interests. These could arise from access to drinking water, control of natural resources, the effects of population increase, availability of arable lands, migration of new peoples. They all require different reactions in order to ensure the continued wellbeing of the state and its inhabitants. They also caused friction between neighbouring states. Even in modern times, the increase of world's population implies that the

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[28] *Supra* note 23, p. 530; *Supra* note 26, p. 400.

[29] For interpreting historical sources, see Quentin Skinner, *Visions of Politics, Volume 1: Regarding Method* (New York: Cambridge University press, 2002), 40, 41, 51.

consumption or energy, water and food is increasing with almost 50 per cent during the next decades and hence, the potential for increasing number of conflicts is immanent.

In spite of conflicting interests between neighbours and enemies, there still is space for cooperation. Trade for example is beneficial for parties. In Kautilya's hypothetical map of the surrounding of the Conqueror we see that trade routes connect even the Conqueror and his enemies. In modern context, our increased understanding of the benefits of trade poses even stronger impetus for cooperation. In addition to economic gains from regional and global cooperation, the globalized world has brought global problems that no single state can solve alone. This is different from Kautilyan times, when global warming, terrorism, international drug traffic or the different types of prisoner's dilemma (in e.g. industrial emissions or excessive fishing) requite joint action. These common interests and the scarcity of resources imply on one hand that cooperation is ever more necessary and on the other that individual state's national interest is not interconnected only with those of its neighbour but also other members of the global world. In other words, Kautilya's circle of Kings or the playing field of statecraft involves various circles, not only sub-regional, but also regional and global.

The Circle of China: Asian allies against the Western Enemy

Let us now attempt to apply these notions to the current international order. Clearly, the two strongest states are China and United States. As global powers, they are each other's neighbour-enemies on the global level. US still is considerably stronger than China, and hence China needs to cooperate with its allies to counter the US influence. China's circle of states includes then its partners in international organizations like

BRICS, Shanghai Cooperation Organization (SCO) and the RCEP. On global level, India and Russia, the two other major Asian powers, share interest an interest with China and belong to China's circle as allies.

BRICS is a multilateral organization with decision-making power equally shared by its members. BRICS serves the interests of its members in different ways, but does not involve pooling of political authority. Increasing the availability of development finance is a so far the main globally important achievement of the organization. The founding of New Development Bank (NDB) in 2016 shows the ability of the BRICS-countries to cooperate and concentrate their economic power to undermine the dominance of Washington Consensus in development finance.[30] In spite of the common interest of Asian powers to balance against US, there is a delicate balance in cooperating with China. Neither Russia nor India wish to become part of a new Tianxia system with China as the hub of Asia. This explains why BRICS for example has only limited field of political action in the form of development finance and economic cooperation and why decision-making power in the BRICS and the NDB is equally divided among its members.

Shanghai Cooperation Organization (SCO) was founded in 2001 between China, Russia and four minor states with Iran, Mongolia and Afghanistan as observers and Turkey, Belarus and Sri Lanka as dialogue partners. Now that India and Pakistan will join the organization in 2017 where after the bloc will cover most of the Eurasian military and economic powers. SCO holds military drills on a regular basis; it will also launch a development bank.

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[30] *Supra* note 9, 30–33.

Along with BRICS, SCO is not the only organisation bringing together the major Eurasian powers. RIC, the ministerial level conference between Russia, India and China, coordinates member states' policies in multilateral and regional organisations. In the Communiqué of the 13th ministerial conference, the RIC countries stated their commitment to 'democratization of international relations' and to a multipolar world. RIC are exploring cooperation in oil and natural gas production and transportation, besides building networks between their respective think tanks, businesses and cooperating in agriculture, disaster mitigation and relief, medical services, and public health. With regard to the long-standing disputes between India and China and China and Russia, the SCO, RIC and the BRICS indicate the trio's ability and will to see beyond the disputes and work together in the regional and global setting.[31]

The Indian Circle: Rebalancing towards the Future Enemy

In addition to this multilateral and Asian setting, different countries have other divergent interest on regional and subregional level. If looking at India as the Conqueror, then Pakistan would be its enemy and vice versa. SAARC and BIMSTEC provide a platform for advancing common economic interest in the subregion, but these interests are shadowed by the conflicting interests between the two rivals India and Pakistan. In India's circle of states, China can be seen as the Middle King, because it has border (and interests) in the subregion.

[31] Samir Saran,"India's Contemporary Plurilateralism," in, *The Oxford Handbook of Indian Foreign Policy, ed. David Malone and Srinath Raghavan and Raja Mohan* (Oxford: Oxford University Press, 2015), 623–635.

China is also very favourably related to Pakistan[32], which is part of its allies or vassal states (in the Kautilyan terminology). China's regional influence and its attempt to gain stronger access to the subregion through SAARC –membership, supported by Pakistan, collides with India's economic and political interests. Through SAARC, Pakistan and China can increase their influence in the subregion in addition to gaining more power.

For India, this is not a win-win situation. India's future progress is destined to lift it to an equal footing with China making the current Middle King its future enemy. Through gaining influence in the economically significant members of the SAARC, China and Pakistan can achieve economic gains and political influence among India's circle of friendly states and vassals.[33] India already suffers from trade deficit and China accounts for great deal of it. Moreover, China is a central agent of global economy and if it gains a supremacy also in Indian subregion, it is not far that China would actually have established an economic variant of Tianxia system in the whole Asia.

Because of these factors, Pakistan's membership in SAARC implies giving support for the progress of a future and current enemies, Pakistan and China rendering SAARC cooperation difficult with Pakistani membership. In the BRICS summit at Goa in 2016 India invited six of the eight SAARC members in addition to the members of BIMSTEC to participate. Neither China nor Pakistan are members of the BIMSTEC. In the current situation, this can be seen as a counter move by India to

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[32] E.g. Jagannath P. Panda, *India-China Relations. Politics of resources, identity and authority in a multipolar world order* (London: Routledge, 2017), 125.

[33] For a detailed analysis, see chapters on SAARC in this volume, and *supra* note 32, p. 127–131.

reorganize its vassal states and regional influence without the enemy. This is a classic Kautilyan move.

Conclusion

This essay sought to demonstrate that regionalism in a multipolar world order operates through different logic than regionalism in the 20th century in general in European regionalism in particular. Second, this essay also sought to demonstrate, that because of the changing framework of international cooperation, and the Eurocentrism that still shadows our understanding of the regional dynamics, it would be useful to employ alternative approaches of analysis. For this purpose, an attempted is made to employ Kautilya's theory of foreign policy as a framework for analysis.

From this perspective, the confusing mixture of cooperation and conflict present in Asian regional and multilateral cooperation becomes intelligible. It is about balancing the strategic interest of individual states as part of different circles of manoeuvre. SCO, RCEP RIC and BRICS are examples of cooperation where China is the centre and US the enemy. At the same time, decision-making structures in these organizations leave little space for China to establish an American type of hegemony. This becomes even clearer on the sub-regional level, like in SAARC and BIMSTEC, where strategic to contain China's growing influence explain India's recent position towards SAARC and favouring of BIMSTEC.

Status of Islands, Archipelagos and International Straits under the United Nations Convention on the Law of the Sea

Saachi Kapoor[*]

Maritime law is a wide ranging field of law, which under its ambit, includes, salvage, towage and pilotage, carriage of goods by sea, limitation of liability, marine insurance, law of collision, boundaries, law of ownership and registration of ships, to just name a few. Maritime legal regime has been serious transformation due to the vast amount of trade and transportation that takes place through vessels. Furthermore, in terms of maritime security and defense of coastal and offshore maritime assets too, in view of the growing non-military threats to them, international law of the sea is under constant challenge to review and even enact new codifications. This article aims to provide a detailed examination of the status of islands, archipelagos and international straits and the need to ensure their security under the UNCLOS. Attempt is made to study the various aspects, legal and non-legal, of the maritime domains cited above.

The UNCLOS regime

The United Nations Convention on the Law of the Sea (**UNCLOS**), also called the Law of the Sea Convention or the Law of the Sea treaty, is the international agreement that resulted from the third United Nations Conference on the Law of the Sea (**UNCLOS** III), which took place between 1973 and 1982. UNCLOS lays down the legal framework under which activities in the ocean and sea must be carried out. It has also been granted the term – *"constitution for the oceans"*.[1] It is a convention accepted globally, currently with 167 parties to the convention, including

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[1] World Ocean Review, Available at: http://worldoceanreview.com/en/wor-1/law-of-the-sea/a-constitution-for-the-seas/.

the European Union.[2] It is interesting to note that the United States of America has refrained from ratifying the UNCLOS.[3]

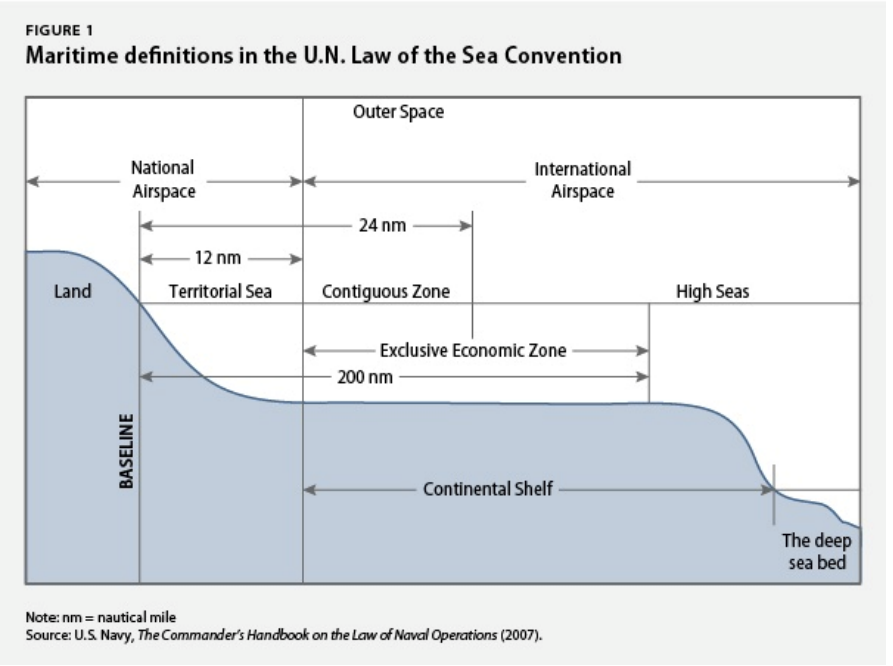

Fig1. Map clearly indicating the definitions laid out in the UNCLOS

Despite the fact that it is by all account not the only important legitimate instrument in presence, the UNCLOS Convention is the most related, setting the framework for seas administration and giving the broadest establishment to uniform administration. UNCLOS is regularly viewed as a system tradition: It sets up establishments and equalizations the rights and commitments of

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2 Division for Ocean Affairs and Law of the Sea, United Nations, Available at: http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm.

3 Patrick, Stewart, "(Almost) Everyone Agrees: The U.S Should Sign the Law of the Sea Treaty", June 10, 2012, The Atlantic, Available at: http://www.theatlantic.com/international/archive/2012/06/-almost-everyone-agrees-the-us-should-ratify-the-law-of-the-sea-treaty/258301/.

states with the hobbies of the worldwide group. It is supplemented by different traditions and conventions.

Yet UNCLOS does substantially more than basically defining the basic maritime domains. It likewise indicates itemized nautical-mile limits for sea zones and sets up "guidelines of the street" for seas administration and operations adrift. UNCLOS likewise contains a brief, however particular, security segment that addresses key precepts of reacting to oceanic dangers. UNCLOS, similar to any complicated convention or bit of enactment, ought to be completely analyzed to decide its disadvantages and also its advantages. We are aware of the fact that United Sates of America has not ratified the UNCLOS. At the outset, the contradiction between the individuals who support U.S. promotion to the tradition and the individuals who contradict comes down to a difference in regards to whether the advantages of enrollment are exceeded by the disadvantages.[4] This is because before signed any convention or treaty, a nation shall always conduct an analysis of whether the rights granted by the treaty or convention outweigh the duties imposed by it or vice versa and on the basis of that, take a decision whether to sign it or not. This guideline by and large remains constant for all bargains, including those including arms control, human rights, the earth, universal courts, and others. UNCLOS is no special case.[5]

Nonetheless, not at all like most different bargains, the terms of UNCLOS keep the United States from exempting itself from its more questionable provisions. In particular, in accordance with Article 309, UNCLOS restricts states parties from submitting reservations or special cases that would some way or another

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4 Groves, Steven, "The Law of the Sea: Costs of U.S Accession to UNCLOS", June 14, 2012, Available at: http://www.heritage.org/research/testimony/2012/06/the-law-of-the-sea-convention-treaty-doc-103-39.

5 *Ibid.*

permit the United States to dismissal provisions that don't comport with the U.S. Constitution or long-standing U.S. law and arrangement.[6] This is one of the main reasons why the United States has not ratified the treaty because without the right to make reservations they shall be bound by all the Articles of the UNCLOS, whether they want to be or not and this is unfavorable to them. Signing the UNCLOS shall open the floodgates of a lot of litigation against the United States with respect to a number of marine activities such as marine pollution etc. Furthermore, they have a large hydrocarbon issue, which, if under the ambit of the UNCLOS, shall be governed by the provisions of the Convention.

Furthermore, under Article 82, member states are required to 'share' a portion of their royalty revenue (revenue share) for oil, gas, or other mineral resources extracted from the extended continental shelf (ECS). It is evident that the U.S does not want to do this as the potential size of the U.S ECS worldwide is significant that they do not want to divide the gains that they get from it.[7]

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6 Groves, Steven, "U.S Accession to the UN Convention on the Law of the Sea Unnecessary to Develop Oil and Gas Resources", May 14, 2012, Available at: http://www.heritage.org/research/reports/2012/05/us-accession-to-un-convention-on-the-law-of-the-sea-unnecessary-to-develop-oil-and-gas-resources.

7 *Supra* note 4.

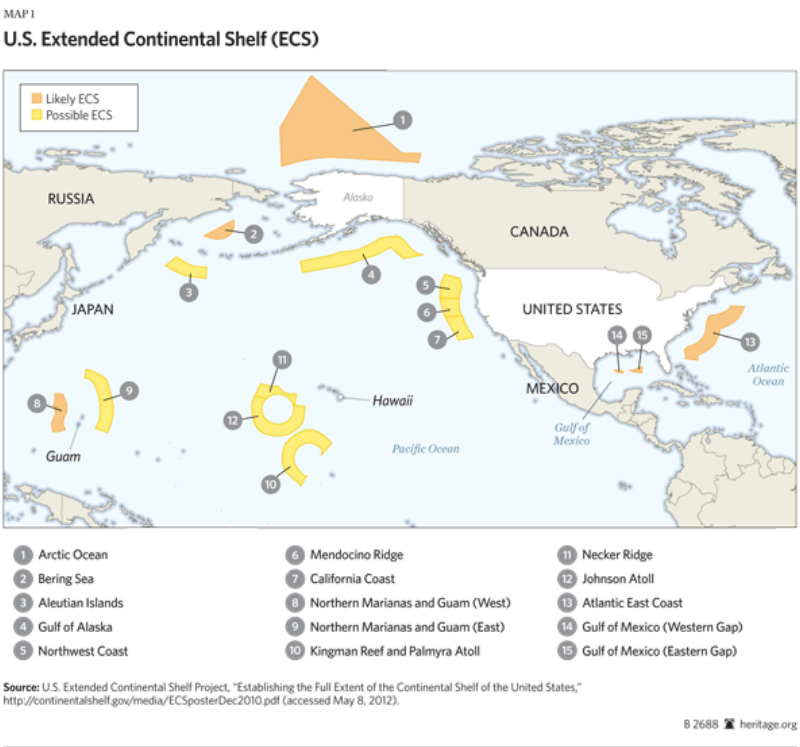

Fig.2: Map showcasing the extent of the potential ECS of the United States.

UNCLOS on Islands, Archipelagos and International Straits

This section shall examine the legal framework of the UNCLOS with respect to islands, archipelagos and international straits. It shall deal with the specific provisions relating to the same.

ISLANDS

Under the UNCLOS, an island is defined in Part VIII, Article 121 as, *"a naturally formed area of land, surrounded by water, which is above water at high tide."*[8] It is also specifically mentioned that rocks that cannot support habitation shall have no exclusive

[8] Article 121, UNCLOS.

economic zone or territorial waters of its own. Article 60 also refers to Islands, and is pertinent with respect to artificial islands and other installations. This article authorizes the coastal state to construct and regulate the construction of certain types of islands and installations within the exclusive economic zone of the nation.[9] It also lays down the various rules and regulations that go along with the construction of such islands and the like, the most important one being that such artificial islands do not have an 'island' status of their own. Similarly, Article 80 states that Article 60 shall apply *mutatis mutandis* to such artificial islands and installations on the continental shelf.[10]

STRAITS

International straits are primarily dealt with in Part III of the UNCLOS, titled "Straits used for International Navigation". This part is mainly concerned with the right of innocent or transit passage. Under Article 38, transit passage has been defined as

"*freedom of navigation and over flight solely for the purpose of continuous and expeditious transit of the strait between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State."*[11]

Articles 41 to 44 of the UNCLOS lay down certain laws and regulations with reference to this transit passage. For example, Article 43 explains the need for safety aids to ensure the safe

[9] Article 60, UNCLOS.
[10] Article 80, UNCLOS.
[11] Article 38, UNCLOS.

passage of a vessel from one place to another through the international strait.[12]

Article 233 of the UNCLOS is also pertaining to international straits and states that nothing in Section 5 (International Rules and National Legislation to Prevent, Reduce and Control Pollution of the Marine Environment), 6 (Enforcement) and 7 (Safeguards) of the UNCLOS shall affect the legal regime of straits used to international navigation.[13]

ARCHIPELAGOS

Part IV of the UNCLOS is in relation to archipelagic states covered by Article 46 to 54. Article 47 is the imperative portion with regard to the drawing of the baselines. Although it does lay down the method of drawing of baselines, there are certain issues with the same that have been dealt with later on in this research paper.[14] As per Article 52, all straits enjoy right of innocent passage through archipelagic waters. There is an exception to the same, which states that this right may be suspended by the archipelagic state, if such sate feels that it is required in the interest of security. Such a suspension shall only take place once it has been duly published.[15]

[12] Article 43, UNCLOS.
[13] Article 233, UNCLOS.
[14] Article 47, UNCLOS.
[15] Article 52, UNCLOS.

Fig.3: Map of Indonesia: The largest archipelagic State in the world

UNCLOS relevance to the South China Sea Islands

In the above section of this paper, we have already examined the provisions present in the UNCLOS that refer to the status of islands. To elucidate on the same, we can look at the South East China Sea dispute. The dispute is regarding territory and sovereignty over certain ocean areas, as well as the Paracels and the Spratlys, which are two island chains that are claimed by a number of countries, either in whole or in part.[16] In addition to the islands that are claimed, there are a number of atolls, rocky outcrops, sandbanks and reefs, one of which is the Scarborough Shoal.

The reason why these islands are in great dispute is because although they are largely inhabited, they have a large amount of natural reserves, which the nations claiming sovereignty over such islands wish to exploit and take advantage of. Malaysia and Brunei claims over the territory is as per the exclusive economic zone (EEZ) provisions of the UNCLOS. They claim that since these territories come within the EEZ of their Nations, they should have

[16] Lowy Institute for International Policy, South China Sea: Conflicting Claims and Tensions, Available at: http://www.lowyinstitute.org/issues/south-china-sea.

sovereignty over the islands. Other countries that have claimed territory and sovereignty over these islands are U.S.A (who has not ratified the UNCLOS), Vietnam, Philippines, Japan and some more.[17] As can be seen, the number of countries laying claims over these islands are large in number because they are either falling within the EEZ for multiple nations territories or there are other basis' on which countries are claiming the islands (for e.g.: a historical claim).

The UNCLOS does not specify with regard to when an island or a body falls within the geographical territory of multiple States and therefore there is little clarity on the issue. As can be seen in the map below, the location of the islands is such that they are in the centre of a number of nations, causing this problem.

Another pertinent question that came up in the arbitration regarding this issue was whether these islands are actually 'islands' as per the definition of the UNCLOS. The Philippines brought up this question and they argued that such islands and not 'islands' as they are reclaimed lands and therefore requested the Court to invalidate Chinas nine-dash line (the name given to the area of islands claimed by China). They argue that such islands are artificial islands and since such islands are not given legal recognition under the UNCLOS, they do not generate maritime entitlements and therefore Chinas claim on them fails on this ground.[18] The reason why the Philippines is arguing that it is not an 'island' is because these islands are actually reclaimed land, so they are saying that under the definition of islands under Article 121 of the UNCLOS, reclaimed land does not feature. It is certain from the definition of an island that there is ambiguity in the

[17] BBC News, Q&A: South China Sea Dispute, 27 October, 2015, Available at: http://www.bbc.com/news/world-asia-pacific-13748349.

[18] Mirasola, Christopher, Asia Maritime Transparency Initiative, July 15, 2015, Available at: http://amti.csis.org/what-makes-an-island-land-reclamation-and-the-south-china-sea-arbitration/.

definition with regard to this and this can be seen as a drawback of the UNCLOS. If we read the UNCLOS definition of 'island', in accordance with the provisions of the Vienna Convention on the Law of Treaties which lays down that we should give words their 'ordinary meanings', then we can come to the conclusion that ordinary formation refers to it being 'naturally' formed and not used in terms of a noun.[19] As per this natural formation theory, it does come under the definition of an island but since there is very little clarity on the issue, the dispute is still very much unsettled and the Philippines do have a case for their contention.

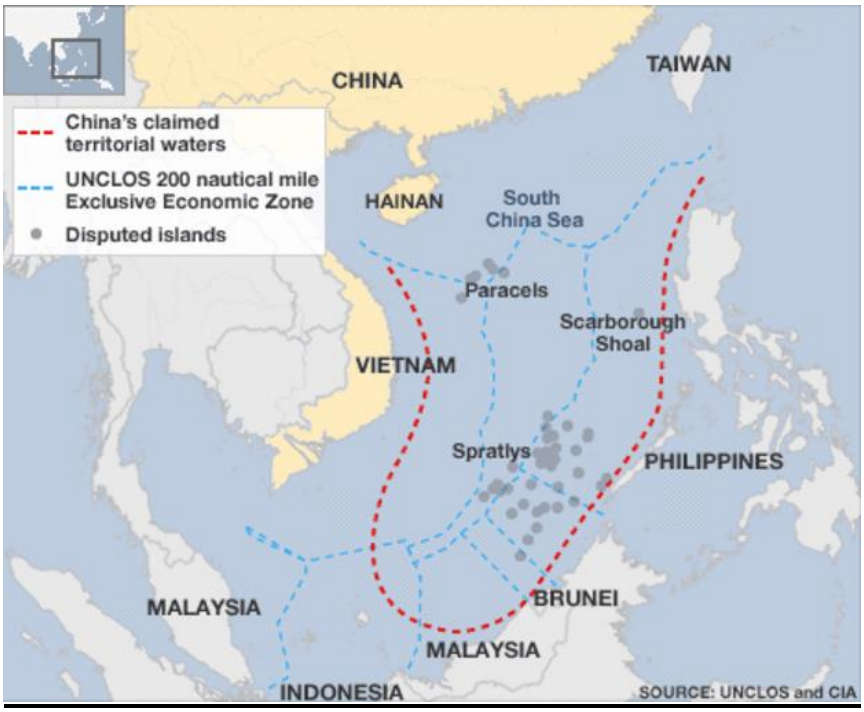

Fig 4: Map showcasing the disputed area in the South East China Sea dispute.

[19] *Ibid*.

Archipelago and the UNCLOS: The Delimitation Dilemma

The problem of archipelagos in the international sphere arose with regard to the baseline. Archipelagos under the UNCLOS are defined as, *"a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such."*[20] The first time the question of delimitation of the territorial sea of archipelagos came up was during the Hamburg session of Institut de troit international, where some groups suggested a change in the status quo by treating the whole group of islands as one unit itself whereas other scholars and societies relied on the existing rules already applicable to all islands.[21]The major question was with regard to the insular waters of the islands – whether they would be part of the domestic territory of the country or whether they would be regarded as international waters. Another pertinent point was whether the distance between the islands should be taken into consideration.

This issue, although important, in the larger realm of things wasn't seen to be high on the agenda, mainly because at the time of the UNCLOS, a large number of these archipelago states were under colonial rule and therefore they didn't have an international voice or opinion and therefore could not play a part in the international order. At that time it was more of a political issue rather than a geographical one.[22]

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[20] Article 46, UNCLOS.

[21] Kopela, Sofia, "Dependent Archipelagos in the Law of the Sea", MartinusNijhoff Publishers, p. 274.

[22] Evensen, Jens, "Certain Legal Aspects Concerning the Delimitation of the Territorial Waters of Arcipelagos", 29 November, 1957, Available at: http://legal.un.org/diplomaticconferences/lawofthesea-1958/docs/english/vol_I/17_A-CONF-13-18_PrepDocs_vol_I_e.pdf.

Although this issue was discussed at certain conventions and international events such as the Stockholm Conference and the International Law Association conference at Genoa, the main stand was explained in the *Fisheries case,* which was between the United Kingdom and Norway.[23]The *Fisheries case,* decided by the ICJ, did lay down some clarity on the issue of archipelago islands by stating the following:

> *"The main argument against analogizing mid ocean and coastal island groups is that in the case of mid ocean groups the enclosure of the waters would transform them either into territorial waters or into inland waters: if the former, existing passage rights are preserved but the result is anomalous in light of the Courts principles respecting baselines; if the latter, those rights are negated to an extent not contemplated in the extent of coastal groups".*[24]

Evensen, the Norwegian jurist, felt that what was laid down in this case was the only practical solution to the issue and that the waters enclosed by the baselines would not per se be seen as internal waters and would depend upon a number of geographical, economic and historical factors. Having said this, the right of innocent passage through the archipelagic straits should be preserved as a general principle of international law.[25]

Article 48 of the Law of the Sea Convention gives that the expansiveness of the territorial sea, the contiguous zone, the EEZ

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[23] *Ibid.*

[24] Anglo-Norwegian Fisheries, U.K. v. Norway, Order, 1951 I.C.J. 117 (Jan. 18)

[25] Lokita, Sora, "The Role of Archipelagic Baselines in Maritime Boundary Delimitation", 2010, Available at: http://www.un.org/depts/los/nippon/unnff_ programme_home/fellows_pages/fellows_papers/lokita_0910_indonesia.pdf.

and the continental shelf of archipelagic States *"shall be measured from archipelagic baselines drawn in accordance with Article 47"*[26]. However, the LOSC does not give any further clarification of how archipelagic baselines can assume a part in marine limit delimitation. Reference to the act of worldwide Courts and Tribunal, together with applicable State practice seems to demonstrate that the part of archipelagic baselines on this inquiry remains to some degree indistinct.

In some cases, nations have attempted to negotiate with each other on the issue of their respective boundaries but these pose a number of other issues as well. In a negotiation, the states are allowed to concede to any strategy for delimitation with a specific end goal to accomplish an impartial limit line. Deciding the strategy for delimitation can be considered as a key phase of the delimitation process. Once the system for delimitation is settled upon, how that technique is executed is critical.[27] In an arrangement where one of the gatherings is an archipelagic State and the other is not, the talk on this matter could well be tedious and debilitating.[28]

Basically, issues can emerge in light of the fact that archipelagic States are allowed to draw their baselines joining their peripheral islands, rocks, reefs and low tide heights as per Article 47 of LOSC. Thus, there is a probability that the non-archipelagic State will contend that its archipelagic neighbor should utilize its typical baseline as opposed to archipelagic baselines.[29] In the event the applicable region of delimitation includes a long portion of straight archipelagic baseline, uniting two far off base focuses, the base

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[26] Article 48, UNCLOS.

[27] *Supra* note 21.

[28] The Law of the Sea, Practice of Archipelagic States, Office for Ocean Affairs and the Law of the Sea, Available at: http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/publications/E.92.V.3.pdf.

[29] *Ibid.*

point to base point system will, most likely, bring about a limit line which lies essentially closer to the archipelagic State than would be the situation had its archipelagic baselines been concurred full impact.[30]

The Bering Strait Doughnut Hole

This section shall examine a recent geopolitical issue with regard to the concept of 'international straits' and apply UNCLOS and state practice to the same. The Bering Strait is a strait connecting the Pacific and Artic oceans between Russia and the U.S State of Alaska. A way in which the provisions of the UNCLOS came into practice was the protecting of fish stock in the Bering Strait through the 1994 Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea (the "Bering Sea Doughnut Hole Convention").

Under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), where the same fish stock or supplies of related species happen both inside of the EEZ and in a range past or nearby it, states can either start a few measures to preserve the stocks or go into territorial or sub regional agreements as per Article 63 of the UNCLOS[31]; In addition to this, States may go into mutual understanding to oversee and moderate fish stocks on the high seas under Article 118 of the UNCLOS[32]. Although the U.S is not a party to the UNCLOS, this agreement between the two states is a good example to prove, generally, how agreements between states (regional agreements) are also an extremely important part of enforcing the provisions of the UNCLOS. This example also showcases how not only regional agreements are important, but the participation of other interested States is also

[30] *Ibid.*
[31] Article 63, UNCLOS.
[32] Article 118, UNCLOS.

essential. Preceding the idea of an EEZ in the UNCLOS, the Bering Sea was famous for pollock*(Theragrachalcogramma)* and a large amount of unregulated fishing would happen in this area. Subsequently, in 1977, as the EEZ idea picked up robustness and turned out to be generally acknowledged amid the last years of the UNCLOS III, various States including the United States and the previous Soviet Union pronounced 200-mile EEZs in this way leaving a little parcel of the Bering Sea as high seas.[33] This region, called the Doughnut Hole for its shape, was not an area where overfishing took place due to the fact that there was a conviction that it was not extremely rich in pollock. All things considered, it didn't really matter much as outside angling nations were given fishing rights in both the EEZ of the previous Soviet Union and the United States. On the other hand, when the pollock fishery started to increase in terms of financial significance for the United States, outside vessels were not permitted to angle in the U.S. EEZ any more. A large portion of the remote fishing vessels were banned from the previous Soviet Union for similar reasons. The outcome was that the outside vessels, such as those from China, Japan, Poland and the Republic of Korea, chose to investigate the Doughnut Hole and by utilizing trawl nets suspended as a part of midwater (not at all like the base trawl nets utilized as a part of the shallower parts of the Bering Sea) acknowledged they could get a considerable measure of pollock. Other than the fishery worries, there was developing proof of illicit angling inside of the U.S. EEZ, which incited U.S. Gold country Senator Ted Stevens to call the United States and the previous Soviet Union to augment "respective fishery locale" over the Bering Sea. Determination S.396 on the "illegal fishing in the International water of the

[33] Rosen, Tatjana, "Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea", December 8, 2006, Available at: http://www.eoearth.org/view/article/151447/.

Bering Sea" required a ban on pollock harvests in the Doughnut Hole pending the negotiation of an agreement.[34]

By 1990 the fish stock was nearly dead. The outside fishing vessels that were routinely dispatched to reap pollock in the district opposed the ban, yet the proof was clear: the pollock fishery had caved in from overfishing. In 1993 at long last they quit angling. It should be noted that the reason why the fishing was quit was not due to the fact that the U.S and Soviet Union reached an agreement to protect the marine life but it was due to the States' own self-interest in ensuring that there remains some sort of availability of fishing stock. While at first the expectation was for the United States and the previous Soviet Union to go into reciprocal understandings, it was entirely evident that the support of the alleged "distant water fishing nations" (DWFN) was required. This clearly shows how international cooperation is extremely necessary in situations such as these and without such cooperation, even with international conventions and regional agreements, very little can be achieved.

Arrangements between the U.S., the previous Soviet Union, China, the Republic of Korea, Japan and Poland proceeded from 1991 to 1994. At long last in 1994, they went into the Bering Sea Doughnut Hole Convention, whose intention is to deal with the pollock fishery the day it will come into existence and to work towards the maintenance of the marine environment.

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[34] *Ibid.*

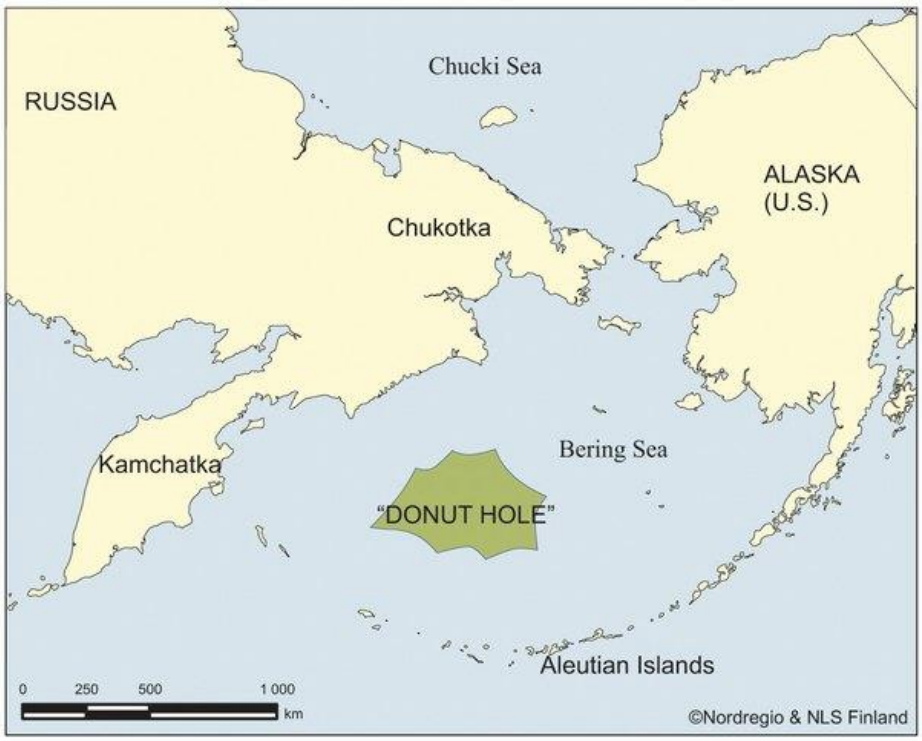

Fig 5. Map Depicting the Bering Sea Doughnut Hole.

Conclusion

The UNCLOS is comprehensive in its approach to regulating the seas but as we have seen through the course of this paper, there are certain international cooperation issues with the same. The most pertinent of these issues being that the United States has refused to ratify the Convention. Having said this, it is a well-known fact that a number of the provisions of the UNCLOS come under the ambit of general principles of international law or custom and therefore the United States is obliged to comply with those provisions even though they are not a party to the convention.

With respect to islands, archipelagos and international straits, the convention covers all three adequately. Having said this, there is some ambiguity regarding the baseline determination and domestic

territory of archipelagic islands, which more or less now has been solved by state practice among the concerned states. International straits are sensitive issues and can cause problems such has been seen in the case of the Bering Strait. The important thing in these sorts of situations is the political cooperation of all States, without which carrying out any action becomes extremely difficult. To conclude, this article attempted an examination of how the UNCLOS handled various problems arising in relation to these three land forms. Having said this, it is pertinent to note that to a great degree status of these marine domains does not only depend upon the provisions of the UNCLOS, but also upon the political and geographical situation prevalent at that point of time, which keep changing.

Implications of Recidivism in Criminal Jurisprudence

Nupur Thapliyal[*]

Introduction

> *"Society has never been liberated from the plight of crime. Since some contravention of the condemn code of conduct is likely to occur, crime is inevitable, universal and unconquerable."*[1]

Criminal conduct is an essential part of the social deportment and it can be acknowledged only in correlation to the personal and social circumstances. There are various enormous contentions that have their roots in the essence of the social environment, the nature of the social world and the offender and the experiences arising out of interaction between individual and the environment. The more intricate is the working of the social organization, the more varied traits of crime. The expeditious transition from tradition to contemporaneousness has perhaps increased the intensity and scope of crime. Crimes are continually increasing and the most effectual means for fending off crime is something that is vehemently debated by politicians, legal practitioners, criminologists and the public. Now the question that arises is the propensity the released offenders' manifests to lapse into foregoing condition or pattern of behavior. Within that substructure, it is a particular apprehension how to reduce crime by already known offenders? What can be the most constructive way of ceasing an offender from re-offending?

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[1] Martin R Haskell, *Criminology: Crime and Criminality* (1978), p.466.

Various narratives are used to describe recidivists including habitual criminals and professional offenders. Recidivism can be expressly defined in various ways. J. Simon in one of his book describes recidivism as the act of a person repeating an unacceptable conduct after he has either experienced some adverse consequences of that conduct or has been trained to tamp out that conduct.[2] Webster's Dictionary has explained it as the proneness to worsen into a previous condition or mode of behavior, especially in criminal behavior.[3] The Dutch proverb which says "Once a thief always a thief" accurately depicts recidivism. Nevertheless, numerous studies of recidivism are in relation with calculating the reoffending rates of people once released back in the society. According to the Bureau of Justice's distinctive report on recidivism, in America within three years of exemption 67.5% of the released persons were again arrested.[4] Out of 650,000 released offenders from prisons and about 7 million from jails yearly about 2 out of 3 offenders were rearrested within a period of 3 years. In United Kingdom, the rate of offenders reoffending is 9%. In Sweden statistics shows that 35% of the offenders convicted for offences between 1991 & 2000 were reoffended.[5] The rate of reoffending in Canada is 44% for prisoners released in 1994-958. More than half of the released convicts during 1993-2000 returned to the prisons in Finland.[6] Between the inmates liberated from prisons of New Zealand in between year 1995 and 1998, 94.7% prisoners were seen to have prior convictions. 86% were rearrested

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2 J-Simon, "Recidivistsn *and Criminology*"(1996), p.26.

3 Webster's online Dictionary, *http:www.m-w.comdictionary /recidivism*. See also *http:www.britanica.com/eb/article*, last visited 10th October 2016.

4 Bureau of Justice Statistic, U.S.Department of Justice, *http:/www.ojp.us.doj.gov/bts/reentry/recidivism.htrn*, last viewed on 11th October, 2016.

5 The Swedish National Council for Crime Prevention, *report on Recidivism*, 11.08.06.

6 Public works and government services Canada, h*ttp:/www.psepc-sppcc.gc.ca/publications/rorrections-200302- ca5p*, last visited on 11th October 2016.

within 5 years. As on 30th June 2005, in Australia, 60% prisoners had previously gone through a sentence in an adult prison. 38% of the prisoners who were liberated in 2002-2003 returned to prison within 2 years. In India the rate of recidivism was 8.3% in 1995 and it drastically increased to 10.4% in 2004.

The increasing prison population and high rates of recidivism, result in numerous individual, social and economic costs. No accomplished research has yet been done that throws light on the occurrence of recidivism, its effect and causes on the social & economic structure of the community. Today, recidivism causes a significant problem in almost all the countries. The rate of crime is growing. The number of repeat offenders in the penal associations is on the increase. Is there any particular territory or state which shows great growth or decline in the rate of recidivism? Can any particular reason be imputed for that? Family is the foremost institution which makes the offender what he is. Like if there is a sustained conflict between parents that will create problems among the family. Also, alcoholic members in the do not care for anyone else and they will be a disturbance to other members. If it's a broken family, the upbringing will never be normal. There may be a criminal member in the family which that can result in encouraging the other members to engage in criminal activities. It is very natural that a criminal's family will be tagged as criminal. Will growing up in such a family result in inner instability and distort tendencies in a person? It can convince him to commit crimes. Once the person becomes a criminal, it is very necessary for him to get full support of his family in disposing off the criminal way of life, otherwise he may likely to become a recidivist or a repeat offender. Can criminals expect that support from their families?

The Indian Constitution says that no one should be a victim of discrimination. Religion or caste is to find out whether people

belonging to any particular community or religion are involved in committing most of the crimes. The issue of recidivism itself discloses that the problem cannot be managed by ordinary laws alone. Considering that the normal criminal laws of the country is not adequate to sway the recidivists as they are immune to the influence of the normal penal process, the law-makers at its policy making phase have made some special legislative actions. The presence of these determined offenders is believed to bring about a sense of fear and insecurity among the members of the society which is regarded as justifying the validation of special measures. If we want to move something from a place some force has to be applied, if it is still not moved a little more force is applied. Likewise, it forms various questions like whether aggravated penalty is to be imposed upon the recidivists whether crime result in bad character of the offender etc. is to be considered while giving punishment. Since ancient times India has been plague with the issues of criminal gang as well as armed bandits.

From several centuries these gangs have lived on crimes like theft and other offences against property. Thus they have reached a high degree of professional, specialized and talented efficiency in that sort of crime. At the time of British Rule, they tried to restraint this danger by enforcing a special law namely the Criminal Tribes Act.[7] The act was amended in 1924 and was incorporated under Sec. 3[8] that the provisional government had a cause to believe that any class, tribe or gang of people was addicted to the commission of non-bailable offences, it was authorized to declare by notice that such class, tribe or gang or part thereof was a criminal tribe for the purpose of the said Act. Section 4 to 9 of the Act dealt with the registration of the members if any such criminal tribe or part of any criminal tribe by District Magistrate. The District Magistrate had to issue a summon at that place where registration was to be made

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7 D.C.Panday, *Habitual Offenders and the Law* (1983), p.3.

8 See section 3 of The Criminal Tribes Act, 1924.

and other places as he thought deemed fit calling upon all members of that criminal tribe to appear at the time and place specified before the person appointed to give that person such information as may be important to enable him to register. The District Magistrate had the power of exempting any member from the registration. After the preparation of the registration, name of no person could not be added to the register nor could any register be cancelled except under an order in writing by the District Magistrate. Sub section (2) of Sec. 7 provided that before the name of any person was added to the register, the magistrate had to give summon to the accused.

The first All India Law that dealt with recidivism was the Indian Penal Code (1860). Sec. 75[9] operates to give authority to the courts for awarding a higher punishment for recidivism. The Cr.PC[10] contains preventive and punitive provisions that deal with repeated offenders. The researchers analyzed the working of sections dealing with recidivists of Cr.PC and the Indian Evidence Act 1872 and did tests based on their applicability and their limitations.

In spite of far-reaching development in practices and improvement in criminal justice, there is a sheer rise in crime rate, out of which, many of the people are recidivists. Recidivism is one of the chief indicators of the influence of criminal justice intervention. It provides details that have value for all aspects of the criminal justice system. Criminal Justice System is mainly concerned with the risk of offenders repeating crimes and the type of involvement required to efficiently manage that risk. Many research studies conducted in various countries like UK, US, Sweden, Australia, Canada, Finland, and New Zealand show usual predictors of reoffending.

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9 See Section 75 of The Indian Penal Code, 1860.

10 Code of Criminal Procedure, 1973.

- Gender being one of the top factors, males tends to repeat more than women.

- Rate of Recidivism against any property offence seems to be much higher than the offences against any person. Even though in the beginning, a person may have committed offence against any person, majority of the later offences were against the property. It is a special occurrence that a murderer commits murder repeatedly. But recurrence of theft can be found in plenty of cases.

- Rate of re-conviction of the young offenders is high. Because the age of release of the prisoners has increased, the chances of reoffending have decreased.[11]

- The age of committing the first offence is very important as the younger the age of initial offence, higher the chances of becoming recidivists. It has been seen that majority of the juvenile offenders become recidivists later on.

- Recidivism rates were much higher for the persons with earlier convictions. The more convictions they had probability of them to repeat the offence was more.

- Education is a vital predictor in recidivism. The higher the education, the chances of reconviction of offences decreases. In almost all the studies it has been observed that the educational level of repeat offendors is very low. Most of them have reached only up to high school.[12]

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[11] Georgia Zara and David P. Farrington, Criminal Recidivism: Explanation, prediction and prevention, Willan (July 25, 2015), p.85.

[12] L.Scott Silverii, Policy Alternatives for Reducing Recidivism, 1st edn. (January 18, 2013), p.56-58.

- Reconviction rates of the prisoners released from a longer sentence is found to be lower in rate. Recidivism is very high among short term offenders.

- If an ex-prisoner stays without reconviction for a longer period, then the chances of him committing other offence is very low.

- Offenders using drugs prior to present offence have higher recidivism.

- Race and gender of the offender is also in relation to the rate of recidivism.

- The offenders with stable employment reoffend less.

Conclusion

Social forces to a vital extent precipitate criminal behavior of individuals. In order to attain the main objective of punishment, which is, holding back and controlling the crime, the factors affecting the criminal justice system are not supposed to focus on the gravity of crime, but its main causes must also taken into consideration. An individual's behavior towards the surrounding society, his attitude towards the society, as well as society's attitude towards him will depend on the conduct of his family. It is the first and most important connection which acts as a bridge between him and the society. The atmosphere within the family regulates the formation of his personality, whether the person is social or antisocial. We can see clearly that 72.38% of the repeated offenders or recidivists have more family members so that they aren't in a state to get proper care from their parents.[13]

[13] Deborah A. Malone , Recidivism: The Haunting Revolving Door, LAP LAMBERT Academic Publishing (January 11, 2013), p.156.

Separate associations/institutions must be made available to rehabilitate drug addicts and alcoholics. They have their different set of issues. As a result, they have to be treated. In most prisons these addicts die due to withdrawal strokes. Different institutions should be made for the first time offenders. They must not be allowed to club with hard core criminals, which may become the way for them to become repeated criminals or recidivists. Remand offenders should be kept in separate jails. Judiciary should keep a check in remanding prisoners. First time criminals should not be kept in remand. Some other alternative should be used such as, be kept in the custody of social agencies. Habitual criminals should be kept in solitary confinement for so that they should be aware that they have the potential to live without the pleasures and addictions they got with the illegal money from the offence, that there are more than such pleasures which leads to peace and tranquility. If he can attain that state in his mind, he will never go back to repeat his offences.

If a criminal is to be improved then good values and morality have to be instilled in him. So that he can resist the temptation towards the criminal way of life when he is set free from the prison. The judges should apply their mind in depth while giving sentences. If they feel and are given legal aid from the circumstances of the case that this person should not let loose in the society to terrorize people then they should be taken out of dissemination whatever be the cost. Apart from this they should take a clement view for people who have committed crime as a result of inevitable circumstances; even though both of the offenders have committed the same offence under the Penal Code. For example, murdering after a rape of a small child, or murdering someone who tried to rape his child or beloved, both have committed murder but the punishment should be different for both the offences. The guidelines sentenced should be understandable about how previous offending or lack of it should affect the level of the sentence. As

far as possible, some different alternatives to life imprisonment should be given to first time criminals and juveniles. Rehabilitation and aftercare should be given to all the criminals released from the jail. Moreover, a radical change should be achieved on the prisoners within the jail itself. The viewpoint of the society must be changed and more involvement of the community should be gained to bring forth rehabilitation and reformation of the offenders. The people must be made aware about the double standards and the hypocrisy existing in the society, and to come up with something that work against it. This will help to erase out from the minds of the offenders the feeling that the society and surroundings which is hypo-critic has no privilege to summon them. No authorized system has an absolute answer to this problem of recidivism. United efforts are important to cope up the problem at its very origin. The criminal justice system in itself cannot undo such deviation of such wider socio- economic system as are linked with recidivism. However, war against crime has to be employed, if not to win, at least to make sure that it is not getting lost. Even the reduce in the level of recidivism as a more practical goal can be achieved only by expanding prevention of recidivism and controlling measures beyond the criminal justice system and to restraint conditions which give rise to it.

Arresting Crimes of Aggression: Contouring the Conditions, Battling Critics and Punishing its Authors

Raavi Mehta[*]

Introduction

With the advent of the 21st century, the international community has been confronted by a serious question whether to exonerate political or military leaders from the liability of the crimes of aggression or to make them criminally accountable for such acts by laying down strict international norms? A decade long discussion over this led to the adoption of the definition of crime of aggression[1] which provides that using armed force by one state to another against their regional integration, political autonomy or independence and where the intensity or character of the act is expressly conflicting to the Charter of United Nations is understood to be an act of aggression.[2] Planning, preparing, initiating or waging of a war of aggression is a crime under international law as incorporated in the Nuremberg Charter in 1945.[3]

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1 Review Conference Of The Rome Statute Of The International Criminal Court, Kampala, 2010.

2 Rome Statute of International Criminal Court , Article 8 *bis*, (it includes appropriation of territory, military occupation and massive invasions using power, military barricades of ports or bombardment without approval of Security Council).

3 Charter of the International Military Tribunal, annexed to the London Agreement (Nuremberg Charter, 8 Aug. 1945, Art. 6 (a) Crimes Against Peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing, Also refer Article 4 of UN charter.

We have embraced the new definition under which any political or military pioneer can be made liable for crime of aggression, if he practices control and his act blatantly infringes the United Nations Charter. However, this crime is not prosecutable until 2017.[4] After 2017, the ICC will have a different jurisdictional framework and its exercise will depend on the type of crime committed before observing the nationality of the accused and the domain over which the crime has occurred. It is equivocal whether aggression should be characterized as the prime crime. But it is irresolute whether positioning the reality of violations as per categories or taking into account a case-by-case evaluation of the pertinent facts is a beneficial activity.[5]

The Rome Statute of 1998[6] recorded the crimes of aggression as one of the gravest violations which is under the jurisdiction of the courts and the Review Conference of Rome Statute[7] in 2010 amended the Statute to incorporate meaning of crimes of aggression and brought it within the jurisdictional power of the courts. Also, the International Criminal Court (ICC) members harmonized and reached to a conclusion laying down the conditions for prosecution of the acts of crimes of aggression. These amendments gave United Nation Security Council (UNSC) the paramount power to decide whether an act constitutes to be a crime of aggression and provides that only state pioneers and authorities with enough power to engage the state's strengths into forceful activity can be culprit of this crime. Numerous States came to a consonance in the Review Conference in Uganda; ergo a tradeoff between the definitions adopted in the Rome Statute and the UN Charter was observed.

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4 Review Conference Of The Rome Statute Of The International Criminal Court, Kampala, 31 May – 11 June 2010, Article 15 *ter.*

5 The Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR-95-1-A, 1 June 2001, Appeal Judgement, (para.367).

6 Rome Statute of International Criminal Court, Article 5(2).

7 *Supra* note 4.

Critiquing the definition

A decade of disagreement and inapplicability indicates that the definition of crimes of aggression is still incomplete and ambiguous. It fails to address the contemporary acts of aggression which is germane for its future applicability and does not provide for situations where the perpetrator is from outside the state. Aggression confers individual criminal liability and therefore, is not an issue among different states. But this does not necessarily means that the architects of this crime cannot be from outside the state. As seen and observed, perpetrators is a composition of state and non–state actors and to avoid irregular outcomes for future, extending the definition to cover attacks carried out by parties outside the state becomes imperative.

The inability to keep new wars from occurring is because of the misconception created by traditional types of wars. This accentuates the burning question as to whether such a definition can be applied on contemporary wars that take place now. These new types are identified as 'new wars' and are fought between various combinations of state and non-state parties in an attempt to attain dominance over the population of other territory. The current definition does not orient itself to the contemporary concerns and hybrid wars which are prevalent in modern warfare and international community. The new wars cannot be comprehended in conventional terms and therefore, a new definition must be postulated which is versatile in covering conceptual advancement.

Further, the definition mandates the State's involvement in validating the happening of the crime of aggression. Unless the State gives substance to its occurrence, the act of aggression cannot be prosecuted by any court. The role of State gets highlighted when the demarcation line between act of aggression and crime of aggression is crystal clear. Arising of criminal

liability over an individual is contingent on the exhibition of aggression by the State, which makes the whole framework unjust.

In an endeavor to battle against impunity for engaging in aggressive wars, the widely praised leap forward in achieving a consensus on the definition of crime of aggression could be viewed as an unnecessary inclusion to the ICC's jurisdiction. Unless it is seen that the inclusion of crime of aggression in the International Statutes can have positive impact on international community, we must refrain from such an inclusion. Rethinking and redefining this term to expressly incorporate non-state parties as prospective authors of crime of aggression is equally needful.

Prosecuting aggression: Jurisdiction and applicability of law

There are three types of domestic prosecution that can arise on the occurrence of crime of aggression. A State could indict its own nationals. Secondly, a State with no genuine association with such a crime could prosecute under absolute universal jurisdiction. Though, such an arrangement can bring about intense political issues. Lastly, one State can impute blame to another State for the crime of aggression. However, this is likely to sabotage peacemaking endeavors to resolve disputes, dissuade States from undertaking certain military forms of philanthropic involvement and even weaken the ICC's authenticity and reliability.

The modern jurisdiction theories provides for two prominent branches: Conditional and Absolute jurisdiction. Universal jurisdiction would allow States or Organizations at international levels to assert jurisdiction over an individual accused of committing the crime of aggression notwithstanding his nationality, nation of residence or other connection with the entity prosecuting him. Violations arraigned under universal jurisdiction are contemplated to be against humanity and are excessively despicable, making it impossible to endure jurisdictional arbitrage.

The Kampala Conference concentrated on providing a separate jurisdictional regime in the view of voluntarism, state assent and a higher threshold for prosecuting over the authors of this crime. This was reflected in various measures adopted which had critical ramifications for the exercise of domestic jurisdiction. Domestic legal frameworks cannot enjoy the same jurisdictional parameters as other ICC violations. In this way, crime of aggression will have its own jurisdictional framework.

To prosecute crimes for aggression effectively, absolute jurisdiction over such crimes must be given to the State through domestic legislation. It is because when the domestic legal system will come in terms with the international community, it can end impunity for abusers of human rights. But the view to adopt an absolute universal jurisdiction through domestic legislation would create a situation of conundrum where the States would prosecute human rights violators at the option of Judges or prosecutors, as echoed by many critics. The possibility for political misuse of international criminal law expands rapidly as the notion to exercise absolute universal jurisdiction becomes more popular and prominent. These difficulties can only come to an end when all the countries obligate to act together to make space for new transformative improvements in global criminal law.

Tradeoff of jurisdictional power between UNSC & ICC

ICC included crime of aggression under its jurisdiction in 2010 but the decade long debate on jurisdiction is still relevant and continues. ICC which has the power to exercise jurisdiction over genocide, war crimes and crimes against humanity must be made competent to try cases of armed aggression after its definition and conditions are clearly laid down. It suffices for present purposes to note that the trigger mechanism for the ICC's jurisdiction over aggression remained a key sticking point jeopardizing the adoption

of the aggression amendments.[8] Permitting aggression to be tried the same as the other three prominent crimes can help to maintain the decisions of the International Military Tribunals of Nuremberg.[9] As a consequence of empowering an international court to prosecute the authors of aggression, the need for trade off between the powers of ICC and UNSC comes into the picture.

One of the most enduring grievances to the ICC is the trepidation that proceedings can be spurred by political objectives as opposed to a genuine longing for justice. ICC is still in its embryonic stage and is striving to establish itself and this makes it the most inappropriate time to centralize the power to prosecute such a sensitive and new crime of aggression in their hands. Whereas, entrusting UNSC with the power to make final decision must be regarded as *fait accompli.* The real question is whether a dependent political body, having the colossal veto power to shield themselves and their allies, should have the power to prosecute one of the gravest violations of international law?[10] When the role of UNSC is restrained to just determining whether such an act has occurred and to shield the state parties, it serves the purpose.

The ideal framework which covers the entire spectrum of aggression will not bestow broad powers of jurisdiction to any international court or organization. The UNSC's exclusive right to make determinations about this crime is an autocratic power which must be denied. There must be an arrangement which makes lawfully possible for the General Assembly or the ICC to make

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8 Gillett, Matthew, The Anatomy of an International Crime: Aggression at the International Criminal Court (January 31, 2013). Available at SSRN : http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2209687.

9 Also confirmed by the UN General Assembly in 1946.

10 Second Thoughts on the Crime of Aggression Andreas Paulus, The European Journal of International Law Vol. 20 no. 4, EJIL 2010, available at http://www.ejil.org/pdfs/20/4/1939.pdf.

such determinations where UNSC fails to do so. Conforming absolute power on any institution to determine and confirm the act of aggression is fatal for development on the international front. Also, there are strong contentions that inter-state communities need to cooperate to address difficulties confronting universal criminal law and the ICC. Equipping all such institutions with balanced powers can save the international community and end this impunity. Combining efforts of UNSC and ICC can reduce the persisting disagreement between different territories and thereby, aid the prosecution processes.

Power entrusted with UNSC

The definition of this crime is built on the UN Charter system and it provides that if an armed conflict has been sanctioned by UN, then it fails to be constituted as a crime of aggression. The power to give assent to such acts manifests the paramount and extensive role which UNSC plays in setting this framework in action. Being an independent body, ICC may sometimes find itself in conflict with the UNSC's decisions because of this supreme power of approval it is vested with. Also, it does not provide as to which party is responsible to disprove UNSC's approval for armed conflict. Critics argue that there is a probability that such sanctions may be a result of States' intervention, political motivation or diplomatic pressure and hence, entrusting UNSC, alone, with such a prime power of authorization may be discriminatory.

If the UNSC neglects to make a determination, the ICC prosecutor is approved to start an investigation *suo motto* or upon a request made by the ICC state party. The UNSC can impede or terminate such an examination at any stage for 12 months.[11] Non-state parties don't fall under ICC purview when the prosecutor starts investigating and the States which are party to the convention can

[11] Rome Statute of International Criminal Court, Article 16.

exclude themselves from such a jurisdiction by presenting a declaration of non-acceptance to the court.[12]

Conclusion

The work to define the crimes of aggression has continued even after the establishment of the ICC under the Rome Statute. It is undeniable that such considerable efforts have strengthened the understanding of the crime of aggression and the necessity to punish this crime. Strenuous efforts has been put in contouring all dimensions and elements, listing illustrative acts and circumscribing the classes of individuals who can be made victim of this crime but still a comprehensive definition answering fundamental questions has not been propounded. The demand of the hour is to have a definition which aims to impact both the aspects i.e. individual liability and state responsibility, thereby serving the interest of mankind. We are half way through in this odyssey to make the definition exemplary but our arduous efforts will only be justified when a robust definition is installed. Since the efficacy and sanctity of law is based upon its enforcement mechanism, not just installing but implementing the provisions in true spirit is called for. The reasoning of prohibiting aggression must be borne in the mind of government and other concerned authorities in order to dissuade perpetrators for pursuance of peace and harmony. It is one such appalling crime which poses a serious threat to the world community as a whole and for which the state has a rationale and moral duty to institute legal proceedings against any person responsible for it. No place should be a safe haven for a person committing such a reprehensive crime.

Extending the definition to include use of threat and force by non–State actors would make the definition relevant and eloquent. The most feasible solution is to have both domestic and international

[12] Rome Statute of International Criminal Court, Article 15 *bis*, Article 15 *ter*.

statute books to provide for the punishment of this crime. Where the involvement of only State actors is established, then the accused must be prosecuted by the national courts under domestic Legislation. Where participation of non–state actors is seen, then international courts must have jurisdiction to try such individuals in compliance with the international laws. Such a synthesis of domestic and international laws is the panacea for all the crimes prevalent at international level.

National boundaries must disappear while prosecuting a person accused of such a crime. It is not just a human rights concern but also an issue which transcends state borders and assumes global dimensions. Sometimes, implementing these provisions of international law into domestic Legislations of a country is also necessary to fulfill its purpose. The new challenges brought in by this crime must be responded by international laws and institutions as we orient ourselves to the whole new range of contemporary concerns in worldwide affairs. The international law is yet to witness developments on this front but the time is ripe to write a new chapter in the history of international crimes but with utmost coherence and pragmatism.

Doctrine of Hot Pursuit: Problems of Enforcement

Ishan Seth[*]

The internationally recognised doctrine of hot pursuit, in simple terms states that when a vessel which is in a foreign territory commits some infraction of the laws of the foreign states, then the state in question can *actively*[1]pursue the particular vessel into the open seas beyond its territorial waters. This formulation of the doctrine was given in the famous case of the *The King v The Ship North*[2]. In this case a fishing vessel, the North along with two dories, was fishing illegally in Canadian waters.

A Canadian coast guard vessel upon spotting this vessel actively pursued this vessel and its two dories in waters beyond the Canadian coast and managed to tow them back to Canadian mainland for prosecution. The Canadian Supreme Court in this case upheld the internationally recognized right of hot pursuit and held that the actions of the Canadian coast guard were within the powers presented by the doctrine of hot pursuit.

The rights of vessels as recognized by the international community include the right to roam freely on the high seas[3]. This freedom is also stated in the UNCLOS under article 87 of the convention[4]. Article 87(1)(a) of the convention provides for the freedom of navigation to vessels on the high seas. When such a right is presented in international law an important question with respect to

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1 *The King v The Ship North*, 37 S.C.R 385 (1905-06).

2 *Ibid.*

3 Robert C. Reuland, The Customary Right of Hot Pursuit Onto the High Seas: Annotations to Article 111 of the Law of the Sea Convention, 33 Va. J. Int'l L. 557 1992-1993, 558.

4 United Nations Convention on the Law of the Sea, 1833 UNTS 3 / [1994] ATS 31 / 21 ILM 1261 (1982).

the enforcement of a seemingly contradictory right, the right of hot pursuit, arises. States, including powerful states like the United States and China, support this freedom wholeheartedly. Even with this support provided by the powerful states the right of hot pursuit is also actively recognized by the international community.

This article examines the multitude of issues in relation to the doctrine of hot pursuit. The right of hot pursuit is, as described by some authors of the sea, an extraordinary right[5]. This has been labeled as an extraordinary right by authors as there must be extraordinary circumstances in existence for the exercise of this right. This principle is known as the exclusivity of flag jurisdiction according to which a ship is subjected to the laws of that country whose flag it flies[6]. This principle is described as being the backbone of international law of the sea[7].

One of the main reasons as to why such an exception to the rule of flag exclusivity is tolerated is that international law does not envisage the sea to provide a safe haven for illegal activities. While the logic of the hot pursuit rule might be contradictory to the freedom of navigation, it ties up with the broader objective of the international law of the sea. The right of hot pursuit ensures that a state can enforce its laws and regulations against ships that do not belong to it. One of the most important scholars of international law of the seas, William E. Hall notes that the right of hot pursuit "is a continuation of an act of jurisdiction which has been begun, or which but for the accident of immediate escape would have been begun, within the territory itself, and that it is necessary to permit it in order to enable the territorial jurisdiction to be

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5 Craig H Allen, Doctrine of Hot Pursuit: A Functional Interpretation Adaptable to Emerging Maritime Law Enforcement Technologies and Practices, Ocean Development and International Law (1989) v 20 p 309-341, 311.

6 *S.S. "Lotus" (Fr. v. Turk.)*, 1927 P.C.I.J. (ser. A) No. 10.

7 *Supra* note 3 Reuland.

efficiently exercised[8]". Hence this right has been conceived of in the terms of a state exercising its jurisdictional rights and preventing an offender to escape prosecution merely because it has crossed the actual jurisdiction of the state in question.

Before moving on to the problems of enforcement of the right of hot pursuit it would be only appropriate that an analysis of the conditions under which this right can be utilised be undertaken. The convention as well as the High Seas convention of 1958[9] do not provide an exhaustive list for the enforcement of this right.

Enforcing Hot Pursuit: Legal Provisions

One of the conditions to be satisfied before the right of hot pursuit can be exercised is that a state must have good reason to believe that a foreign vessel has violated a law of the coastal state[10]. Article 111(1) of the LOSC states in no unequivocal terms that the right of hot pursuit can only be utilised "when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State[11]". This condition must be must be satisfied before a state can legally undertake pursuit of an offending vessel. An important omission that must be noted is that the article does not mention any specific laws that must be broken or only certain specific offences, commission of which would give rise to the right of hot pursuit[12].

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8 William Edward Hall, A Treatise on International Law, (Clarendon Press, 1917), 252.

9 Convention on the High Seas, 1958 13 UST 2312 / 450 UNTS 11

10 VasiliosTasikas, Unmanned Aerial Vehicles and the Doctrine of Hot Pursuit: A New Era of Coast Guard Maritime Law Enforcement Operations, 29 Tul. Mar. L.J. 59 (2004), 24.

11 Article 111(1), LOSC.

12 William T. Burke, Myres Smith McDougal, The Public Order of the Oceans: A Contemporary International Law of the Sea, (New Haven 1962), 24.

Apart from mentioning the condition for using the right of hot pursuit, Article 111 also lays down the jurisdiction within which this right can be utilised. According to Article 111 this right can be only used when a foreign vessel is "within the internal waters, the archipelagic waters, the territorial sea, or the contiguous zone of the pursuing State[13]". Article 111(2) of the LOSC adds to the territory provided by the previous article. Under this article the state is also allowed to exercise the right of hot pursuit when the foreign vessel is within its "exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations[14]". These articles become important because while ascertaining the location of the foreign vessel the enforcement agencies must determine with some amount of accuracy that the foreign vessel was within the jurisdiction of the state.

One of the biggest enforcement problems that arise in the exercise of this right is that this right is not an unqualified right. The pursuing state must end its chase of the offending vessel in the territorial waters of the allegedly offending vessel or of a third party nation[15]. In other words, the rights of a state are recognised in so far as they do not breach the rights of any other states. The right of hot pursuit then is a sort of a balance between two contradictory rights. It is submitted that a states right to enforce its laws and regulation is not unqualified and unlimited hence the pursuit of the offending vessel must end with the allegedly offending vessel going in the territorial waters of a third country or in its own country.

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13 Article 111(1), LOSC.
14 Article 111(2), LOSC.
15 Nicholas M Poúlantzas, The Right of Hot Pursuit in International Law, (MartinusNijhoff Publishers, 2002), 39.

But the biggest problems with respect to the enforcement of this right comes in terms of the amount of territory to be monitored[16]. In this century of technology manning of large swaths of great seas require a nation to be up to date with the latest technological advancements. One of the biggest challenges that the rule of hot pursuit faces is the opposition to the traditional 'cannon shot rule[17]'of determining location of the offending vessel. Before a hot pursuit is begun, as has been mentioned earlier, the vessel enforcing hot pursuit must determine where the offending vessel was. This is because international law requires that a state 'satisfies' itself of the location of the vessel through the use of available 'practicable means'. These are the conditions that are mentioned in the 1982 convention of the law of the sea[18]. A big omission though, from the convention is the fact that it does not mention any fixed way of determining the location of the offending vessel in the territorial waters of the state pursuing the right of hot pursuit. The coming in of new technology such as aerial photography, radars with accurate plotting mechanisms, and satellite technologies[19] present a challenge to the traditional modes of determining location.

Another challenge that the enforcement of the right of hot pursuit is dealing with is the mode of communication fit for informing the offending vessel to stop before an action against it is taken. Traditionally audio or visual signals were thought to satisfy this

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16 Natalie Klein, Maritime Security and the Law of the Sea, (Oxford University Press, 2011), 109.

17 Kinji Akashi, Cornelius Van Bynkershoek: His Role in the History of International Law, (Kluwer Law International,1998), 170.

18 Supra note 3 Reuland, 36.

19 N PradeepRathnayake,The Condition for Initiating, Maintaining, and Purpose of Hot Pursuit under International Maritime Law: Recommended Reforms for the 21st Century, Kotelawala Defence University. http://www.kdu.ac.lk/southern_campus/images/documents/symposium/symposium2012/papers/ts/TheConditionforInitiatingMaintainingandPurposeofHotPursuitunderInternationalMaritimeLaw.pdf, last accessed 29/09/2015.

requirement. But because of technological advancements it is clear that there are better means to fulfil this condition. There remains no doubt in the marine world today that marine communications happen through the radio or through the use of satellite technologies[20].

It is suggested that once states agree on a proper rule of hot pursuit they must go and extensively codify it. While codifying the rule of hot pursuit, two approaches can be adopted by states. The first approach seeks to strictly codify the rule of hot pursuit by laying down all the rules and regulation in a strict and a non-discretionary manner. This approach is called the mechanical approach. The second approach seeks to create a good mix of discretion and hard law. In this approach, which is known as the functional approach[21], the states do not specify procedural means but instead give some amount of discretion to the enforcing vessel. This approach is useful in the modern era where the boundaries are not solidly defined and the states require some degree of discretion to deal with the offending vessels.

Modern treaties are increasingly turning their attention to functional clauses with give discretionary powers to the states to pursue their rights in a full-fledged manner against the violators of international law. Thus the problem of determining the location of the offending vessel is best solved by the use of a functional approach. The commander of the enforcing vessel is given the right to use his judgement in a discretionary manner to determine the location of the allegedly offending vessel. The right of hot pursuit is a very important right in terms of maritime rights enforcement but is has been observed that this is being curtailed by

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[20] *United States v Arra*,630 F 2d. 836, 838 n.2 (1st Cir. 1980).

[21] Benedetto Conforti, Does Freedom of the Seas Still Exist, I.Y.I.L (1975) pp 5-24, 12.

a time before technological advancements were made in maritime navigation.

Codification of the Right of Hot Pursuit

The right of hot pursuit has a long history of codification and the present form was reached after a lot of debate and comprise[22]. The right of hot pursuit is generally derived from the practice of customary international law. The doctrine of hot pursuit is a doctrine of law of the sea that is connected closely with the freedom of the seas since this doctrine forms an exception to the right of freedom of the seas. The history of codification of this right can be traced back to The Hague Codification Conference conducted in the year 1930. In The Hague codification conference the discussion on the right of hot pursuit was dealt under the heading of "Legal Status of the Territorial Seas[23]"

To trace the codification and the present status of the doctrine of hot pursuit it is important to trace the historical underpinnings of the doctrine. So while the modern version of the doctrine might have only appeared in the year 1958 Geneva Convention on the High Seas, the traditional version of the doctrine goes back almost 300 hundred years. The first mention of a right of hot pursuit is found in Bynkershoek's *Quaestionum Juris Publici* in 1737[24]. In this text the great scholar Bynkershoek questions whether it is lawful for enemies to commit crimes in neutral territory. He answers the same in negative and goes on to enunciate a situation wherein it would be lawful for a vessel to pursue another vessel in the 'heat of the battle' on neutral seas[25].

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[22] Donald R Rothwell, Tim Stephens, The International Law of the Sea, (Bloomsbury Publishing, 2010), 372.

[23] Supra n 10 Poúlantzas, 40.

[24] Susan Maidment, Historical Aspects of the Doctrine Of Hot Pursuit, 46 Brit. Y. B. Int'l L. 365 (1972), 366.

[25] *Ibid.*

Although this was the first scholarly mention of this right, the first judicial mention of the same came in the year 1805 in the case of *The Anna*[26]. This case was decided in the context of the war between Great Britain and Spain. In this case a ship was captured by the British off the cost of Mississippi Mud Islands. Since this was neutral territory the question was whether the capture was lawful or not. Sir William Scott presiding in this case held that such a capture would only be valid if the captor ship had not done anything illegal during the capture of the ship. This case and Bynkershoek's text provides the historical underpinnings of the doctrine. The opinion provided by Sir William Scott in the *The Anna* was further supported by the great scholar Oppenheim. Oppenheim opines that a vessel has not right to pursue an enemy into neutral waters and if the same has been done then the neutral must act or extract reparations from the vessel[27].

One of the earliest attempts at the codification of the doctrine of hot pursuit was taken at the meeting of Institute of International Law at Heidelberg in the year 1879[28]. Under a document titled *Projet du reglement international des prises maritimes* the institute tried to frame the right in terms of a right that was too be utilised in the waters of the belligerents or on the high seas, it expressly prohibited the utilisation of this right in neutral waters or in the waters that were saved from the threat of war[29]. Another early attempt at codification of this doctrine was made at The Hague of the Institute of International Law and the consensus reached at this meeting was that a right of hot pursuit would not lay in neutral waters and the pursuing state may even have to indemnify the

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[26] 5 C. Rob. 373 (1805).

[27] Oppenheim, International Law, (9th ed., Robert Jennings &Aurthur Watts, Oxford University Press, 2008), 567.

[28] *Supra* note 24 Maidment.

[29] *Ibid.*

neutral state for any incursion into its territory[30].Support for these positions was also provided for in The Hague Convention no. XIII which dealt with the rights and duties of neutral powers in the course of a naval war.

After having discussed the views of various writers and judicial decisions on the doctrine of hot pursuit it is only natural that the author mentions the attempt made by the League of Nations to codify the doctrine in international law. The League of Nations committee of experts for the codification of international had prepared a questionnaire[31] that was sent out to states to take their views in for the codification of the right of hot pursuit. After taking the views of the states the League settled on a definition the experts drew up a definition under Article 10 which was as follows;

> *The riparian State shall have the right to continue on the high seas the pursuit of a vessel commenced within its territorial waters and to arrest and to bring before its courts a vessel which has committed an offence within its territorial waters. If, however, the vessel is captured on the high seas the State whose flag it flies shall be notified immediately.*[32]

The end result of all the debates surrounding the codification and the limits of the doctrine of hot pursuit was undoubtedly the 1930 Hague Conference for the Codification of International Law. After taking the views of more than fifty states the codification committee was finally able to frame the definition of the right of hot pursuit and the same was provided under Article 11 of the

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[30] Glanville Williams., The Juridical Basis of Hot Pursuit, B.Y. 20 (1939) pp. 83-97.

[31] Publications of the League of Nations V (1926), Legal Questions V, 10', in American Journal of International Law (I926).

[32] League of Nations, *Official Journal, Special Supplement*, No. 21, p. 10.

Final Act of the Conference on the Legal Status of the Territorial Sea[33]. The definition that was framed in this conference was the same as the modern definition of the doctrine. An important thing to note is that this conference was never codified into a full-fledged convention on the status of the seas. It then fell on the International Law Commission to frame the doctrine of hot pursuit for its inclusion in the Geneva Convention on the High Seas. After another round of negotiations and viewpoint collection from the states, the framers finally codified the right of hot pursuit in Article 23 of the Geneva Convention on the High Seas[34].

Conclusion

As has been pointed above doctrine of hot pursuit is a doctrine of international law which is seemingly a contradictory right to the general principles of international law of the sea. While writing this research article, the researcher came across varied definitions of the right of hot pursuit, but perhaps none was as striking as the one provided by the eminent scholar O.P. Sharma. .Adm.O.P. Sharma a former Rear Admiral of the Indian Navy provides a clear and crisp definition of the doctrine of hot pursuit. In his words the right of hot pursuit is

> *The right of hot pursuit allows a state to follow a foreign vessel into the high seas. This right also includes the right to arrest a foreign vessel after it has committed some infraction of the laws of the pursuing state. The pursuit commences as soon as the offending vessel enters the national waters, territorial sea, or the contiguous zone of the pursuing state. It must also be stopped when the offending vessel enters its own national waters. The pursuit must also remain*

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[33] *Ibid*.

[34] Article 23, 1958 Convention on the High Seas 13 UST 2312 / 450 UNTS 11.

> *uninterrupted. Force may also be used to bring the vessel in.*[35]

The Supreme Court in the famous case of *Republic of Italy & Ors. v Union of India & Ors.*[36] also stressed upon the doctrine of hot pursuit. While this case did not directly concern the doctrine of hot pursuit, the Supreme Court felt the need to deal with this important topic. The court held that the doctrine of hot pursuit is something that has been practised since the inception of international law of the sea. The Supreme Court also stressed all states have a duty to respect the principles of freedom of navigation and the principle of innocent passage which form the core principles of international law of the sea. But, it also stated that the principle of hot pursuit forms a core exception to these principles.

From the aforementioned discussion it is clear that the law and policy dealing with the doctrine of hot pursuit is historical and there is a need to revisit this doctrine of gargantuan importance. To deal with the changing technological environment the doctrine of hot pursuit must be revisited and technological changes incorporated into the doctrine. The major problem with this right of hot pursuit is the fact that it is plagued by differing interpretations of the same concepts[37]. It has also been observed by Mr O.P. Sharma that domestic courts, while interpreting the doctrine of hot pursuit have misinterpreted the core principles of the doctrine[38].

Hence bringing about a uniform standard for adjudicating upon the doctrine of hot pursuit is a priority. States must sit together for

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35 O.P. Sharma, The International Law of the Sea: India and UN Convention of 1982, (Oxford University Press, 2009), 82.

36 Writ Petition (Civil)No.135 of 2012.

37 Natalie Klein, Maritime Security and the Law of the Sea, (Oxford University Press, 2011), 113.

38 *Supra* note 35.

codification sessions and conferences to chalk out a strategy to bring about radical technological advances in the doctrine and move towards a functional definition of the same.

Equivocal Indo-Naga Conflict

Shimreichon Awungshi Shimray[*]

Mid 20th Century witnessed birth of many new nations which brought a new meaning to the concept of sovereignty across the globe. The Universal Declaration of Human Rights (UDHR) adopted by United Nations General Assembly in Paris on 10 December 1948[1], was a milestone in the history of Human rights. It rekindles the rights of many nations which were under colonial rule to become sovereign. The freed nations were able to oversee and work for the welfare of its citizen without interference from other nations in social, economic and political aspects. However, the Declaration of Universal Human Rights still remains virtual reality for few communities around the world. One such community is of Naga people[2] whose right to self-determination was suppress since colonial era of British India. They represent the minority in the country and are subjugated atrocities from the ruling Government.

The Naga homelands are divided within two countries – India and Burma. This separation has a ramification of people's right to self-determination. The regions in this part of the country witness some of the longest incessant conflict in the world. The involvement of

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[1] Available at www.un.org/en/universal-declaration-human-rights/ (last visited May 20, 2016).

[2] Drouyer, A. Isabel, Drouyer Rene, " THE NAGAS: MEMORIES OF HEADHUNTERS- Indo-Burmese Borderlands vol.1"; White Lotus, 2016
The Naga people are a conglomeration of several tribes inhabiting the North Eastern part of India and north-western Burma. The tribes have similar cultures and traditions, and form the majority ethnic group in the Indian state of Nagaland, with significant presence in Manipur, Arunachal Pradesh and some small population in Assam.

non-state actors aggravates the complexity of the conflict[3]. In order to bring a resolution to such conflict, it is imperative to come up with a definite solution for peaceful co-existence. Land rights and self-determination are given a special status in UDHR.

Early attempts to resolve the Naga Issue

In the early attempts to resolve the Naga issue by the government of India, the concept of Shared Sovereignty was first introduced by R. Suisa during the Prime Ministership of Jawaharlal Nehru. R. Suisa believed in peaceful co-existence with India and to form a federal relationship to solve the Indo-Naga dispute. Sovereignty is not viewed in absolute sense as the interdependence among nations becomes more prominent.[4]Furthermore, shared sovereignty is a political term used to refer a geographical area to which administrative power are divided among two separate entity under mutual understanding. Though the implementation of such political status is limited in the society today, in contradictory, it still exists in some parts of the world.

As per the resolution adopted by the United Nation General Assembly, it was reaffirmed that all peoples have equal rights and freedom to determine their political status and self-determination.[5] In this context it was imperative for Naga people to demand political freedom from India and Burma. The British never fully controlled the Naga inhabited areas of Nagalim. Roughly only one-third of Nagalim was under British control and the remaining territories were excluded as 'un-administered'[6]. Owing to Naga

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3 Hazarika, Sanjoy; Strangers of the Mist: Tales of War and Peace from India's Northeast; New Delhi u.a. 1994.

4 Simon Green, William E. Paterson, Governance in Contemporary Germany: The Semi Sovereign State Revisited.

5 United Nations Department of Economic and Social Affairs (DESA), Available at http://www.un.org/documents/ga/res/50/ares50-172.htm (last visited May 20, 2016).

6 A. LanunungsangAo; From Phizo to Muivah; 2002.

people unique culture and custom, the people indigenous to Naga Hills were protected by British under special laws.

Growth of Naga Nationalism

Political rights of Naga people were reaffirmed soon after World War I, with the formation of Naga Club which reignited and brought political reformation among Naga people. Naga were free people before the arrival of British. Their inherent rights over land and resource were inseparable. The Identity of a Naga were interwoven with the land he owns. Each village of Naga Republic functions with its own governing based on indigenous way of governance more akin to the ancient Greek Republic.[7] The Naga Club, socio-political foundation for the Naga nationalist movement[8], believes that the right to sovereign nation was due to Naga people. This Club submitted a memorandum to Sir John Simon in 1929 on behalf of Naga people, expressing the desire to let the people of Nagalim decide her own future with- social, economic and political. This result, the Naga Hills to be excluded from the reform Scheme under the Government of India Act, 1935, which declared the Naga Hills as "Excluded Area" administered by the Government of Assam[9]. The British during World War II, noticed the active involvement of Naga to safeguard her land and territory. Some of the British officers discuss the possibilities of forming "Crown Colony" only for Naga inhabited areas. British officers realized that, Naga people have a deep emotional attachment with their land, and to see Nagalim under the occupation of someone is too much to bear. It was during the same time period that, British Prime Minister Churchill announced, "Any nation or sub nation wanted independence, they should

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7 Sunita Pant Bansal; Encyclopedia of India,2005, page160 .

8 Chandrika Singh, Naga Politics: A Critical Account, Mittal Publications. 2004, page 6.

9 Kotwal, Dinesh; The Naga Insurgency: The past and the Future, Available atwww.idsa-India.org/an-jul-700.html (last visited July 5, 2016).

declare to the world before 15th August 1947"[10].Keeping this in mind and the encouragement of Mahatma Gandhi, the Naga Club, declared Independent on 14th August 1947, one day before India officially announced her Independence[11]. The same declaration was wired to UN, the British Government and the newly born Indian Nation too, in anticipation they will accept and honor the declaration made by Naga people.

The Naga Club declaration of Independence was not accepted by the newly born India. The irony lies in the fact that Naga do not realize that their homeland was already divided among two nations. This geographical division of people and land was done without considering the indigenous people's opinion. Nagas were on the right track to nationhood. Under the leadership of A.Z. Phizo, Naga National Council (NNC) government was set up. This was done in continuation of 'Plebiscite' held on May 1951, where 99.99% of the people voting opt for separate Nation or Independence.[12]Nagaland has had a unique identity which made it distinct from the rest of the country. In furtherance to such unique identity, the inhabitants, the Nagas must have the right to decide what is in their best interest. UDHR provides for right to self-determination as also states, all men are born equal and they have the right to pursue their interest.

In continuation of the claim of nationalization of their land, support by Mahatma Gandhi was worth mentioning. He compared the suffering India had to undergo when she was rule by another

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[10] Konyak, A Langkhuk; Foundation, failure of Naga political movement, pages 23-35.
Available at www.easternmirrornagaland.com/foundation-failure-of-naga-political-movement/ (last visited May 20, 2016).

[11] Wooldridge,Mike; The forgotten war in Nagaland, Available at news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/32885.stm. (last visited May 20, 2016).

[12] Available at http://morungexpress.com/naga-plebiscite-the-basis-of-sovereign-nation/ (last visited September 7, 2016).

Nation, to that which Naga People had to undergo while their claims of Nationalization were overlooked and disregarded. Gandhiji took the same example and laid emphasis against the subjugation of Naga people by bigger Nation. However, Jawaharlal Nehru, the then prime Minister perceived the Naga issue differently. He miscalculated the Naga issue to be just internal problem, which he thought could be suppressed with force. This took off in the form of long confrontation.

The geographical location of Naga inhabited areas is a geographical sandwich sharing- its border with Burma, China and India. Probably, Indian strategic stand was against nationalization of Nagalim as it would have meant a greater risk to its newly found sovereignty. The strategic location of Nagaland would have posed a greater risk if the same would have been declared as a different Nation. Suppressing inhabitant's people's right of self-determination for political and economic advantage violated the Declaration of Human Rights.

Sir Hyder Ali, the Governor of Assam and NNC (Naga National Council) came into a nine-point agreement.[13] The nine-point agreement set up an interim form of government for a period of ten years for the Nagas, it also included the Rights of the Naga to decide her own political rights in the future. The agreement, however failed to bring about amicable settlement as Sir Hyder Ali, did not keep his part of the bargain. The definition of political freedom in the future, according to Sir Hyder Ali, was just modification of the system not independent, which was not acceptable to NNC.

[13] Anand, V.K, Conflict in Nagaland, 1980, page 64.

Issue of human rights violation

In 1953, for the first time the Naga insurgence used bullets against the Indian army occupants in Naga Hills. The protracted war stretched on which caused immense hardship of the Naga people. Indian Armed Force became an instrument of gross violation of Human Rights. Naga homeland was already divided among two nations and the people were in state of shock. They had never agreed upon such divisions. The State sponsored military aggression crippled the growth and development in this part of the country. The Indian Armed Force committed some of the most horrendous human rights violation under the immunity blanket of AFSPA (Armed Forces Special Power Act).[14]The immunity enjoyed by the army under this Act does not give the privilege to take away or infringe upon civil rights and c crying and hope for justice yet it seems so distant and far only questioning how long is too long the justice been delayed denying the justice to the people.[15]

The traumatic memories of bloodshed, betrayal, innumerable loss of lives, and unremitting struggles, form a major part of the mosaic of influences on contemporary Naga society. And due to their multiple locations, as mentioned earlier, the boundaries not only exist geographically, but also politically, spatially, experientially, and culturally.

In the garb of National Security, the army often makes the lives of the local inhabitant groups miserable . The dignity and right to life of the local inhabitants are violated time and again. The first step and the only way out to these atrocities with the level of human rights violation can be to the notification declaring an area

[14] The Armed Forces (Special Powers)Act 1858 Available at http://www.mha.nic.in/pdfs/armed_forces_special_powers_act1858.pdf (last visited October 10, 2016).

[15] *Ibid.*

disturbed and let the soldiers return to the barracks rather than exploiting the immunity under the AFSPA.

Indian government conflict resolution

After exhausting all possible means of suppressing the rights of Naga people, the Government of India created a separate state of Nagaland carved out from the then existing boundary of Assam. Thus, in 1963, the 16th state of India was born – Nagaland. However, the new boundary of Nagaland excluded Naga inhabited areas of Manipur, Assam and Arunachal Pradesh as well as Naga from Burma. Nagas were naturally unhappy as they were still divided and the bone contention from the beginning was separate homeland. Creation of Nagaland State under the union of India was not acceptable to the Naga as it amounts to overstepping the rights of sovereignty. Further fragmentation of Naga homeland has led to the complexity of the issue. Naga are fiercely independent people and believes that sovereignty is God given right.

The Shillong Accord 1975 was signed by some people in collusion with Government of India. The Accord recognized the Naga acceptance of India Constitution. This was however rejected by number of the Naga people, as itssignatories do not carry people mandate. The led to formation of National Socialist Council of Nagalim (NSCN) which carried forward the right to self determination demand of Naga people. National Socialist Council of Nagalim reaches out to countries around world seeking political rights of the Nagas. Naga people are recognised as a member of United Nation People Organization (UNPO). This acceptance strengthens the political and moral cause of the Nagas. Military action initiated by Jawaharlal Nehru was not the solution instead both the parties need to chalk out resolution acceptable to both parties. Indira Gandhi was willing to negotiate Bhutan type status of autonomy to Naga people thoughg it was declined by the Naga

leader A.Z.Phizo, as he demanded nothing short of sovereignty. Following the signing of Shillong Accord by NNC, NSCN moved to the centre stage of Naga political movement.

Nagas are primitive ethnic people. Their transition from primitive to modernity was rather quicker. Shared sovereignty arrangements, institutions in which authority would be shared by external and internal actors, would offer the possibilities of improving conditions that would not otherwise be available.[16] In World War I, around 2200 Naga were enlisted as porters and laborers for Allied power.[17] Nationalism and patriotism became more apparent during their stays in Europe. This group of people spread the idea of unity and nationalism among their fellow people.

The militarization of Naga homeland was against the protocol of Universal Declaration of Human Rights, which enshrined the basic right of self determination. Nagas being a "people" under colonial and alien subjugation are undoubtedly entitled to the "right to self-determination."[18] The history of armed suppression and and human right violations committed by the Indian armed forces invoking the Armed Forces (Special Powers) Act, 1958 should be cause enough to justify the Nagas right of secession[19]. In any case, if East Timor in the similar case of Indonesian occupation is entitled to the right to self-determination as held by the International Court of Justice, Nagas "right to self-determination" must likewise be assumed to be equally irreproachable.[20]

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[16] Stephen D. Krasner, Building Democracy After Conflict: The Case for Shared Sovereignty, January 2005, pp. 69-83.

[17] Chetri, Pratap. NORTH EAST and the FIRST WORLD WAR. Available at http://www.easternpanorama.in/index.php/other-articles/3144-north-east-and-the-first-world-war (last visited July 20, 2016).

[18] Available at http://unpo.org/article/18183 (Last visited October 05, 2016).

[19] *Ibid.*

[20] Available at http://unpo.org/article/18183 (Last visited October 2016).

Current scenario

Ceasefire agreement signed on August 1, 1997, between NSCN and Government of India became effective from the same year. The parties agreed to negotiate the talk through peaceful means. India accepts the fact that Naga issue can be settled through political means. The ceasefire of 1997 was significant in many respects: firstly, the Indian Government recognized the existing Naga issue as a unique political subject that needs peaceful settlement through bilateral negotiations with the parties concerned; secondly, talk should be conducted not in India but in a third country of mutual consent; lastly, the talk should be held at the level of Indian prime minister.[21] Ceasefire was extended to all Naga inhabited area without territorial limits. Nagalim slowly but steadily crept back to normalcy soon after ceasefire. The creation of Nagaland state did not solve the existing Indo-Naga Conflict. It further divides and segregates the people of Nagalim into the geographical boundary on the basis of their residence. To divide Naga by creation of Nagaland state was a ploy to suppress their cause of self- determination. India divides Naga leadership on the basis of geographical boundary which however backfired and the imbroglio of Indo-Naga conflict continues without a meeting point. India should not have divided the leadership of NSCN, which was fragmented into NSNC (IM), is the most powerful insurgents group and in negotiation with the Government of India and NSCN (K) group which is active in the Naga inhabited area of Myanmar.

The historic framework agreement was signed between NSCN and Government of India. This agreement shows the commitment and sincerity of both the parties to settle the sixty year old conflict. Both the parties also agree that the solution should be based on the uniqueness of Naga history. Based on this uniqueness both parties

[21] Available at http://www.thesangaiexpress.com/indo-naga-second-ceasefire-1997-an-analysis/ (Last visited August 02, 2016).

are ready to work on solution acceptable to both. Shared Sovereignty may be the best option available today to end Indo-Naga issue. India is the world fastest growing economy which, going some forecasts, is poised to overtaken China by the mid of the current century. India therefore can play a constructive role in the long term interest of the country to ensure ethnic harmony and peace on the sensitive borderlands. Naga people are willing to work together with India rather than associating with other countries and their emotional affiliation is more towards India than anybody else. The framework agreement has opened the door to both India and Nagaland to strengthen their relationship and build mutual bond.

Conclusion

Lasting solution to Indo-Naga conflict is essential to end Asia's one of the longest insurgency movements. Many Northeast Indian insurgent groups find safe havens under the wings of NSCN with serious implications for India's national security. As the Naga issue is unique, it should be given special attention. Shared sovereignty between India and Nagaland is one of the feasible options to end Indo-Naga dispute. The term sovereignty as "absolute," individual", and "inalienable" as defined in the sixteen century by political philosopher Jean Bodin, is a classical connotation which has lost its formalism and hence needs to be treated as a flexible political discourse.[22] The world of today has transformed into a big global village'. Interdependence among the nations has increased exponentially, and continues to compel them more and more into a complex web of political, economic, energy, resource and technology-driven relationships . In this sense no nation is fully sovereign. India economic growth has taken the world central stage and being the world largest democratic country,

[22] Leslie Friedman Goldstein, Constituting Federal Sovereignty: The European Union in Comparative Context, 2001, page 72.

it is in India's best interest to work out best amicable solution to settle the age old Naga issue. Dragging the conflict may be of little help to both the parties.

Access to Justice and Judicial Pendency: Confluence of Juristic Crisis

Dr. T S N Sastry[*]

Introduction

Judicial pendency and Access to Justice to courts remains a boiling point in the contemporary era. Apart from the brick bats of scholars and societal comments on the situation, often it leads to unsophisticated wars between the judiciary and executive over judicial pendency. Delay in dispense of justice system not only paralysis but denies the parties to exercise their rights freely. The protracted justice system has a definite impact on the growth and development of economy, as the investors of foreign nations are averse to come to India, with the fear that whenever they entangle in a dispute, there is no time bound settlement of their legal grievances.

Apart from a number of prerequisites, 'Access to Justice' and 'Quick Dispense of Justice' constitutes as a principal characteristic of a vibrant democracy. As long as justice is delayed, it not only prevents the access to the system but remains in the forefront to set a psychedelic mind set of people both within and outside the country. Justice is nothing but the administration of law by courts. Justice is nothing but as stated by Justinian *Corpus Juris Civilis* (adopted from the Roman jurist Ulpian) states 'Justice is constant and perpetual will to render to everyone that to which he is entitled.' Similarly, Cicero described justice as 'the disposition of the human mind to render everyone his due'. The law does not remain static. It does not operate in a vacuum. Law as a dynamic social instrument, need to move around every direction to do address the concerns of society according to varying needs of time. Accordingly, law has a fine intermingling apparatus created by society to bring in balance for purposes of achieving harmonious adjustment, human relations by elimination of social tensions and conflicts. Lord Dinning's once said "Law does not standstill; it moves continuously." This being the purpose of law, without

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paucity to parties, the judge and judiciary out do justice, whenever they are called for at the quickest possible time.[1]

In stark contrast to theoretical perceptions of law and justice, delay in rendering justice constitutes as a primary percept of access to justice and enjoyment of rights freely that are accorded both by international instruments and the constitution of India. Its relevancy is more important than yester years, in spite of wide ranging debates, discussions and suggestions rendered by every possible quarter by native and foreign scholars, researchers, institutional studies with roll-costar remedial mechanism for reforms to empower judiciary to weed out its weakest arm of judicial pendency in dispensing justice at ease, and, to bail out millions of our brotherhood who are languishing in the corridors of judicial tangles for justice to enjoy their basic rights. Yet no answer is found, the basic right of "Access to Justice" is denied every second, for reasons better known to the rulers, makes huge populous every year to reach their grave yards in tranquil without knowing from whom to seek or where to turn for counsel! Judicial delays has a confluence affect on the basic rights to enjoy (especially, equality before law and Life and Liberty), and at the same token, the fundamental principle of access to justice at free will is denied.

Judiciary is in a strong position in India compare to many of its counterparts. In spite of the innumerable problems surrounded it, people still have faith in judiciary; hence knock its doors with a hope to get justice in spite of paucity of funds, judges, courts, et.al. These issues not only delay in justice administration but also diminish the chance of Access to justice, which is crucial for the enjoyment of human and fundamental rights of citizenry of a polity. As a perennial problem, the paper examines the entire issue in a subtle perspective in four parts. Part I deals briefly with the Historical tenets of the concept of Access to Justice. Part II deals with International Law of Human Rights and Access to Justice. Part III deals with one of the important facets of access to justice i.e., delay in dispense of justice and its impact on access to justice.

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[1] *B.P. Achala Anand vs. S. Appi Reddy and* Another, (2005) 3 SCC 313.

Part IV brings out pragmatic approaches germane to access to justice with a rational stance.

Evolution of the concept of Access of Justice

It is not easy to define the term 'Access to Justice.' It has the vintage of ancient fast in every culture and intimately linked with political, legal, and rhetorical symbol of undeniable power and attractiveness for the subjects of statecraft. Access to justice has an intrinsic nexus with the term "justice", in the sense that it is its minimum prerequisite. The notion of justice evokes the cognition of rule of law, of resolution of conflicts, of institutions that make law and of those who enforce it; it expresses fairness and implicitly recognizes equality without any discrimination.[2]

In its early origins 'access to justice' was regarded as a natural right. As a natural right it did not require affirmative action of the state, and an aggrieved party has a right to seek justice at free will. As a natural right, the aggrieved party has free access to judicial institutions and the institutions of law carries an innate promise to render justice at ease to the parties. [3]

In the Western world, the concept of 'access to justice' and 'rule of law' developed from the common law traditions. During the reign of Henry II the benevolence of the King was to hear the aggrieved to provide Kings Justice to disputant parties through the institution of writs. But soon after the abuses of his son John of the King's Justice System, led King Henry II to proclaim the Magna Carta in 1215. The three significant principles of this great Charter laid the foundations for the development of access to courts and justice, which reads as follows:

> *No freeman shall be taken or imprisoned or disseised or outlawed or exiled or in any way ruined, nor will we go or send against him, except*

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[2] Rawl John, " A Theory of Justice" (Harvard University press, 1997) 11

[3] AmitPratapSainik Access to Justice in India http://www.mondaq.com/india/x/369048/Human+Rights/Access+To+Justice+In+India, last updated 27 Jan 2015.

> *by the lawful judgment of his peers or by the law of the land. To no one will we sell, to no one will we deny or delay right to justice.*
>
> *Moreover, all those aforesaid customs and liberties, the observance of which we have granted in our kingdom as far as pertains to us towards our men, shall be observed by all our kingdom, as well clergy as laymen, as far as pertains to them towards their men.*

These principles bind not only the King but also the society for generations to come and no one could depart from the path that has been established. In this regard it has been stated that

> *Wherefore, it is our will, and we firmly enjoin, that the English Church be free, and the men in our kingdom have and hold all the aforesaid liberties, rights, and concessions, well and peaceably, freely and quietly, fully and wholly, for themselves and their heirs, of us and our heirs, in all aspects and in all places for ever, as is aforesaid. An oath, moreover, has been taken, as well on our part as on the part of the barons, that all these conditions aforesaid shall be kept in good faith and without evil intention – Given under our hand – the above named and many others being witnesses – in the meadow which is called Runnymede, between Wonds or and Staines, on the fifteenth day of June, in the seventeenth year of our reign.*[4]

The administration of justice by courts by adopting the principles of *Magna Carta* for over five centuries created gigantic principles which are now known as common law principles. The Commentaries of Edmond Coke and Blackstone have further shaped the principles of common law, which later crystalized as

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[4] James Clarke Holt , Magna Carta, (second Edn) , 1992, Cambridge University Press, 461.

basic tenets for Rights of Men of the French Declaration, US Bill of Rights, and entered into constitutional annals to expand the jurisprudential vistas of 'Justice' and 'Rule of Law.'[5]

The evolution of the concept of Access to Justice as a constitutional right has been further strengthened by judicial dictums across the common and civil law countries. Starting from *Marbury V Maidson* (1803) till *Rovmer V Evans*, (1996), the Supreme Court of USA crafted with much more precision in developing the right as a fundamental right and needs protection.[6] The British courts too firmly held that access to justice is a tradition of common law principles and acquired the status of basic right,[7] though there is no written constitution, the right of an individual to have free access to courts cannot be denied in the absence of a Parliamentary legislation. In *R v. Secretary of State for Home Dept ex pleech*,[8] Steyn LJ., referring to the principle of access to justice held that "it is a principle of our law that every citizen has a right of unimpeded access to a court." After the adoption of the Human Rights Act, 1998, in 2002, reiterating the concept of access to justice as an undeniable constitutional right, Laws LJ., rightly opined that the British system which was once based on Parliamentary supremacy has now moved from that principle to the system of constitutional supremacy.[9]

The concept of access to justice is not a new percept to India. It is in vogue from ancient periods. The ancient Indian legal system is in parlance and akin to contemporary constitutional jurisprudence. The entire legal edifice of ancient periods was governed by *Rajadharma*. All most all the texts in unison advocated *Dharama*

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5 M. JagannadhaRao, Access to Justice, speech at Delhi High Court available at http://www.delhihighcourt.nic.in/library/articles/Access%20to%20justice.pdf, last updated on 20.09.15; also see Leonard W. Schroeter, The Jurisprudence of Access to Justice: From *Magna Carta* to *Romer v. Evans* via *Marbury v Madison available at* http://www.seanet.com/~rod/marbury.html updated on 20.5.2015.

6 Leonard W Schroeter, *ibid*.

7 Raymond v. Honey: 1983 AC 1 (1982 (1) All ER 756).

8 1993 (4) All ER 539 (CA).

9 International Transport Roth Gmbitt v. Home Secretary 2002 (3) WLR 344.

(laws) precedes the king at all times.[10] However compared to Western thinking, the Indian thinking was mostly merged with philosophical, moral, ethical thinking to easily administer. At no point of time, the King was so sacrosanct than law. Law was always regarded as the king of kings.

The practice prevailed in simple and the concept of *Rajadharma* envisaged a mechanism, where in any fact of information of violation of legal principles, the King had to take cognizance. The moment a matter attracts the notice or knowledge of the King is sufficient to initiate judicial proceedings. Further, much importance was not accorded to technicalities of law and procedure. The significant factor of *Rahadharma* was it is the duty of the King to give great importance to Justice. King being the protector of all, as the highest authority he was required to preside over the disputes to do justice to victims and punish the offenders of law. The entire edifices of law, administration of justice were woven around the concept that:

> *Law is the king of the kings; nothing is superior to the law; the law aided by the power of the king enables the weak to prevail over the strong*.[11]

An analysis of the above statement amply specifies it is the duty of the King to administer justice without any bias to rich or poor. Parity of parties is clearly shown at all times. It includes even the blood relation of the King does wrong, need to be punished without any kind of affection or excuse.

The *Manava Dharmaśāstra* coupled with *Chankyaneeti* clearly stipulates that "Even though a child, the King should not be

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[10] Justice M. Ramajois, "Legal and Constitutional History of India", (Delhi, Universal Law Publishing Company, 2004), 578.

[11] Justice M. Ramajois, "Seeds of Modern Public Law in Ancient Indian Jurisprudence and Human Rights-Bharatiya Values", Lucknow, Published by Eastern Book Company, 2001, . 24.

despised, as if he were a mere mortal; for he is a great divinity in human form."[12]

The underlying meaning of the above stanza is the king equals to God, hence even if a child is a victim of justice or a culprit of law justice seem to be done at the quickest span and provide free access to justice. All aspects of human relations need to be legally justifiable with strict adherence to dharma and no other way that the King can excuse any wrong doer.

The Arathashastra of Kautalya a rich treasure trove of knowledge on every aspect of administration including law and justice, in no uncertain phraseology emphasis that the King had to pay personal attention to judicial work. There should not be any hindrance to access to justice, and, it is the duty of the state to provide quick mechanism of access to justice. [13]

In the medieval periods, even in the Mughal period, Emperor Jahangir was much concerned in rendering Justice. To ensure easy and obstacle free access to justice, a gong was hung outside the palace of the Emperor, a person seeking justice had to just pull the chain in order to have his grievances redressed by none other than the Emperor himself.[14] The above paragraph clearly indicates the significance attached to rendering justice system coupled with easy access to justice mechanism available with ease at the door step of citizens.

International Law of Human Rights and Access to Justice

Access to Justice as a natural right in its evolutionary stages did not require the affirmative action of state to seek justice from the courts at ease. But the transformation of state from 'authoritarian'

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[12] L. Strenbach Juridical Studies in Ancient Indian Law, (part- II)1967, Delhi, Motilal Banarsidas, 350-5.

[13] L.N. RangaRahjan, The Arthashastra-Kautalya, 1987, (9thedn,, Delhi, Penguin Books India,) 348-61.

[14] Imran Mohd. Khan, Alternative Modes Of Access To Justice Uttarakhand Judicial & Legal Review http://ujala.uk.gov.in/files/ch10_2.pdf, last updated 28.2.2017.

to 'welfarist' in modern periods, access to justice too transformed itself into a right to effective justice and became a human right and guarantees all the legal rights. The changing perception and discharge of duties of state in modern times, state itself became a party to deny, take away or subvert the rights of its citizenry knowingly or unknowingly through knitted intricacies of legislative or administrative acts on the name of welfareism of a section of people or up-liftment of the in-equals or under privileged .

International law, as in any other legal system, built on the edifice of mutual respect and the promotion of individual liberty across the nation-states in order to prevent the horrendous inimical acts of rulers around the world, evolved human rights to provide justice to judicial mechanism. When a right is violated or damage is caused, access to justice is of fundamental importance for the injured individual and it is an essential component of the rule of law. Yet, access to justice as a human right remains problematic in international law. First, because individual access to international justice remains exceptional and based on specific treaty arrangements, rather than on general principles of international law; second, because even when such a right is guaranteed as a matter of treaty obligation, other norms or doctrines of international law may effectively impede its exercise, as in the case of sovereign immunity or non-reviewability of UN Security Council measures directly affecting individuals. [15]

In order to protect the concept of rule of law and legal access to justice at ease, both at the international and national frontiers, the nation-states, giving a flip to natural rights laid the foundations for the development of human rights, through the Charter of the UN. On this edifice, while expanding the cannon of human rights, access to justice became a corner stone of a number of international and regional documents starting from the UDHR.

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[15] Francesco Francioni, Access to Justice as a Human Right, http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199233083.001.0001/acprof-9780199233083?rskey=2nmwfP&result=5 last updated 1/03.2017.

Access to justice as a human right is broad in its perspective and looks beyond the general perception of easy access to judicial institutions and quick dispense of justice to the problems of the aggrieved parties. Access to justice, if regarded as an instrument to good governance has a number of parameters to look beyond, especially in augmenting the rights of disadvantaged and vulnerable groups including the poor. From the anthropological perception, if any sector tackling an issue, either formal or informal institutional mechanism, justice need to be inexpensive, to be quick or the redress mechanism requirement to provide remedy than creating complications. [16]

Access to justice bears this real perception as a human right, a number of barriers such as long delays in every angel of both justice and administration; severe limitations in existing remedies provided either by law or in practice; gender bias and other barriers in the law and legal systems; lack of protection especially to women, children and prisoners; lack of proper information about the rights especially the rights that can be enjoyed by the vulnerable sections; lack of affective legal aid; limited public participation in governance; extensive number of laws and procedural precepts; avoidance of legal system due to economic and social reasons that weaken[17] the justice system need to be redressed effectively both internationally and nationally through the well-developed formal and informal justice mechanism to wipe out the tears from every human eye.

In other words, it needs to be regarded as a fundamental human right recognized for all persons; in terms of its linkages with a range of human rights issues, especially in relation to human rights in the administration of justice; and, the role of access to justice in the enforcement of human rights in general.[18] The human rights

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[16] Lawrence M Freedman, Access to Justice: Some Historical Comments. Vol. 37, Fordham Urban Law Journal, 2009, 4-5, http://ir.lawnet.fordham.edu/ulj.

[17] UNDP, Access to Justice : Practice Note, 2004, 4.

[18] For a wider discussion ghetnet metiku woldegiorgis, Access to Justice under the International Human Rights Framework, http://www.abyssinialaw.com/blog-posts/item/1459-access-to-justice-under-the-international-human-rights-framework, last updated 01.03.2017.

approach insists that the states both at international and municipal levels need to evolve a strong redresses mechanism to find solutions swiftly without any political overtones. If a grievance persists and not addressed properly, it constitutes as a violation of the civil, criminal, constitutional, and human rights standards.

To achieve capacity to people and access to justice, human rights based approach is required at all times as developed by UNDP. Accordingly, whenever a grievance is found, it needs recognition with appropriate legal protection, with information of legal awareness, to claim a remedy with proper legal aid and counselling, with proper adjudicative machinery. These will provide appropriate remedial apparatus to redress the grievance, which in turn develop the watchdog mechanism in the civil society through NGO'S and the committee systems of the legislature. [19]

Access to justice has linkages to right to Life and Liberty and equality before law and fair trial with in the stipulated time. In the context of human rights, access justice is nothing but justiciability of all human rights and their free enjoyment without any barriers for which the institutions at international and national in toto needs to work efficiently without any discrimination or lackadaisical policy precepts and judicial remedy is only as a last resort. Otherwise as rightly pointed out by Dame Hazel Genn:

> *. . . hard not to draw the conclusion that the main thrust of modern civil justice reform is about neither access nor justice. It is simply about diversion of disputants away from the courts. It is essentially about less law and the downgrading of civil justice.*[20]

Access to Justice as a human right imposes obligations on the state and its structural environment to develop the normative framework, legal empowerment of the poor to seek redress for

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[19] UNDP n 19 6-7.

[20] H. Genn Judging Civil Justice Hamlyn Lectures 2008 (London, 2010) at 69. Cited in Lord Neuberger L.J, Justice in an Age of Austerity, Justice – Tom Sargant Memorial Lecture 2013, https://www.supremecourt.uk/docs/speech-131015.pdf last updated 27.2.2017.

their grievances; capacity to provide effective remedies. By strengthening the mechanism it will clarify the interrelationship of human rights specifically, economic, political, social and cultural upliftment, which in turn would able to achieve the progressive objectives life, liberty and equality in the eyes of law and justice.

Delay In Dispense Of Justice and Its Impact On Access To Justice.

Access to justice has a number of components. First, there should be equality among all sections of the people of the Polity. Secondly, the *law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread***.**[21] This statement of Anatole France connotes the welfarist role of state, equal access to justice to all without any type of restriction to enjoy the fruits of rule of law. Thirdly, the laws of the land need to provide equality without any discrimination in its entirety. Fourthly, a competent and impartial judiciary; Fifthly, accessibility to courts at ease; Sixthly, properly administered courts; Seventhly, a competent and honest legal profession; Eighthly, an effective procedure for getting a case before the court with an effective legal process; Ninthly effective execution of the laws and judgments of the courts; Lastly, a suitable mechanism to remedy the grievances of all types with an efficient mechanism to do justice at the need of the hour than at its own peril.

We the people of India are fortunate enough that our constitutional framers have laid a solid foundation with a cooperative federation to make the life of the citizens comfortable. The *rajadharma* thinking is retained and handed over to us through constitutional contours. The 'Social Justice Philosophy' of Bharat Ratna Dr B.R. Ambedkar[22] and other philosophers, thinkers, social, economic,

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[21] The Red Lily, 1894, chapter 7 http://www.quotationspage.com/quote/805.html last updated 27.2.17.

[22] A Lakshminath, Dr Ambedkar's Perceptions and contemporary Constitutional Perspectives, S.g. Bhat (Ed) Dr Ambedkar and the Indian Constitution, 2001, (Dr B.R. Ambedkar govt Law College, Pondicherry) 112-159.

legal reformers coupled with the legal dictums of international law of human rights has succinctly interwoven through the epitome (i.e., Preamble) of the constitution.[23] In the modern era, compare to several constitutions, the Indian constitution and its philosophical, legal, precepts are more towards access to justice of the citizens in every area of their life with an independent judicial system to seek redress for their grievances even against the state at free will. The rich knowledge and wisdom of the framers reflects the vision that is contemplated for access to justice is clear through its statement which reads:

> *The Constituent Assembly declares its firm and solemn resolve to proclaim India an Independent Sovereign Republic and to draw up for her future governance a Constitution, wherein shall be guaranteed and secured to all the people of India Justice social, economic and political, equality of status, and of opportunity before the law. Freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality, and wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and oppressed and other backward classes*.[24]

The Preambular precepts of justice, liberty, equality and fraternity have been reflected through a number of provisions, especially through part III of the constitution making access to justice as a claim right. This can be read through the provisions of Art14, 21, Art 21 and 22 (1) and (2) (for person in detention).

The framers through the Directive Principles of State Policy[25] casted a bedrock task on the state to work always to achieve the

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[23] For brief over view of the contributions of others TSNSastry: Human Rights and Duties in India: Law, Policy, Society and Enforcement Mechanism, 2014, (University of Pune, Pune) 1-40.

[24] Objectives Resolution of the Constituent Assembly January 22, 1947.

[25] The international community owes its gratitude to Indian Constitution, because it is the vision of the framers of the constitution led them to divide

concept of access to justice at all times to have a new derivation in the Independent Indian Republic.

In the words of Dr B.R Ambedkar

> *We do not want merely to lay down a mechanism to enable the people to come and capture power. The Constitution also wishes to lay down an ideal before those who would be forming the Government and that ideal is economic democracy. In my judgment the Directive Principles of State Policy have a great value for they lay down that our ideal is economic democracy, because we did not want merely a parliamentary form of the government to be instituted through the mechanism provided in the Constitution without any direction as to what our economic ideal or as to what our social order ought to be, we deliberately included the Directive Principles of State Policy in our Constitution*.[26]

Explaining the philosophical objectives behind the inclusion and separation of Directive Principles from fundamental rights, the strong message that the constituent Assembly wants convey is clear from the reflexive tone and tenor of Dr Ambedkar is certainly an alarming call to us to remember and practice the precepts of access to justice without any slightest deviation. The statement reads as follows:

> *Surely it is not the intention to introduce in this part these principles as mere pious declaration. It is the intention of the Assembly that in the future both the legislative and executive should not merely play lip service to these principles but that they should be made the basis of all legislative and executive*

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the mixture of civil and political, Economic, Socio and cultural rights of the UDHR as Fundamental Rights through Part III and Directive Principles as part IV even before the international community thought of its separation.

[26] Constituent Assembly Debates, 19th November 1948, Vol I (Government of India Press, new Delhi). 494-95.

> *action that they may be taking in hereafter in the matter of the governance of the country.* [27]

The philosophy of the constitution in no uncertain terms advocates through the preamble and various articles that until socio-economic justice is achieved political freedom to the masses is meaningless. [28]Through art.38,[29]it is evidently mandated to all institutions in the country needs to strive to achieve the in vogue concept of access to justice interwoven around the edifice of constitution, specifically as directed by at all times to establish the concept of *' Sarovadaya'* of Mahatma Gandhi without any fear or favour.

Judiciary as an important arm of State, the Indian constitution rested its confidence in it to watch over and assist the populace in their realization of the constitutional dictums of Justice, Liberty, Equality and Fraternity and to guide and caution the Ligature and Executive for any excess through Arts 32, 226, 141 and 142. It is expected that the judiciary, especially the Apex Court as rightly observed by former Chief Justice Gajendragadkar L.J.., has to play the role of a *'sentinal on the qui vive*' for protecting the fundamental rights of citizens.[30]The envisioned thought of the constitutional framers needs admiration in arming the judiciary, especially, the Apex Court, to exercise the invisible power of arrows from its bow to create precedents through arts., 141 and

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[27] Constituent Assembly Debates, Vol. VII, P.476.

[28] P.B, Gajendragadkar The Constitution of India: Its philosophy and Basic Postulates, 1969 (Oxford University Press, Nairobi) 12-13.

[29] State to secure a social order for the promotion of welfare of the people:(1) The State shall strive 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 the national life; (2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

[30] A.K., Access to Justice, ILI Golden Jubilee volume on Access to Justice, 200, (ILI New Delhi) 61-66 http://hdl.handle.net/123456789/1023(last updated 3/3/2017).

142,[31] to thwart the disconcerted acts of any public or private institution or body to render proper access to justice in every respect in the enjoyment of Life and Liberty and Equality. The role of judiciary is absolutely significant as much as the other organs of the state to augment the totality of access to justice, whenever anyone knocks its doors for justice either by natural or legal persons in their slightest apprehension.

From the adoption of the constitution, up to now, the judiciary is rendering its best. As rightly pointed by former Chief Justice of India, T.S. Takhur L.J., the courts are not mere institutions to settle disputes between litigants, but need to create normative principles in order to live up to the expectations of rule of law and justice.[32] This philosophy has been followed by the judiciary to a greatest extent and guiding the state to remove the disparities between the social differences exists in the polity. In order to wipe out the miseries of millions of citizens over the inactive attitude of the state, and to meet the demands of the changing times it has taken a number of measures in dispensing justice .

The judiciary, especially the Supreme Court of India always responded to the needs of disadvantaged sections of the country that may not knock the doors of justice for varied reasons. It is known for its innovation in helping the poor and other suppressed sections in augmenting the constitutional rights to a great extent. To reach out millions of people of the country, it has even came out of the traditional dictum of '*locus standi'* of the parties to a dispute and injected the philosophical tenets of *Gideon v. Wainu wright* enunciated by the Supreme court of USA.[33] In *Hussainara Khatoon V State of Bihar*,[34] in response to the letter petition of Kapial Hingorani, (the first lady advocate who drew the attention

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[31] For a clear understanding on the judicial process in exercise of its precedential powers, A Laxminath, Judicial process and Precedent ,(4thedn) 2016, (EBC, Lucknow).

[32] Subordinate courts : A report on Access to Justice 2016, supremecourtofindia.nic.in/Subordinate%20Court%20of%20India.pdf last updated 2.7.2017.

[33] *(*372 NS 335 1876).

[34] (AIR 1979 SC1360).

of the court for Public Interest Litigation) of about 4000 under trails languishing in jails, the court considering the its responsibility in tune with the constitutional philosophy held that "we have always come across 'law for the poor' rather than 'law of the poor.' The law is regarded by them as something mysterious and forbidding –always taking away something from them and not as positive and constructive social device for changing the social economic order and improving their life and conditions by conferring rights and benefits on them. It is, therefore, necessary that we should inject equal justice into legality."[35]

In *S.P. Gupta V Union of India* defining social justice, defining the role of judiciary as an institution belongs to public, the apex court held that,

> *Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right ...and such person or determinate class of persons is by reasons of poverty, helplessness, or disability or socially or economically disadvantaged position, unable to approach the Court for any relief, any member of the public can maintain an application for an appropriate direction, order or writ.'' The court justified such extension of standing in order to enforce rule of law*.[36]

The Court perceived that the theatre of law was fast changing and the problems of the poor were coming to the forefront. In such a situation, the Court has to invent new methods and devise new strategies for the purpose of providing access to justice.

In *Indian Banks' Association, Bombay and ors v. M/s Devkala Consultancy Service and Ors*.,[37] it was held that "In an appropriate case, where the petitioner might have moved a court in her private interest and for redressal of the personal grievance, the court in

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[35] *Ibid*. 1375.
[36] (1981) SUPP SCC 87.
[37] (J. T. 2004 (4) SC 587.

furtherance of Public Interest may treat it a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice. Thus a private interest case can also be treated as public interest case."

Over the years, in a catena of cases, the Supreme Court not only elaborated the concept of Life and Liberty of individual but also enlarged the scope of it by injecting human rights jurisprudence. Accordingly, it has unearthed a number of concepts subtly interwoven in various parts of the constitution to include right to live with dignity, right to clean and healthy environment, right to food and shelter, right to Education, right to Livelihood, the reproductive rights of women, et.al. It further held that right to life includes pollution free water and air, privacy, right to fair trial, right to speedy trial, rights of Transgender, and many more rights. For its contribution to access to justice has received appreciation world over by many of its counter parts and quoted its philosophy in unison in a number of decisions of theirs. Over the years, as rightly said Lord Scarman, L.J., to meet the socio, economic, political challenges courts need to invent themselves to the changing suspect tables. The apex court discarding the age old concept of '*locusstandi'* and adopted the path breaking approach *pro bono public* on its part to fulfil the constitutional cannons of 'access to justice.'

However all is not well with the courts in India. Among the various issues that are plaguing it, the biggest crisis that the whole Indian judiciary is facing is in disposing of cases at a quick span of time, right from its inception. The delay in dispensing of justice is attributed due to the increasing litigation over the years, and the inaction of the executive to create number of courts, appoint of sufficient judicial officers and scanty allocation of funds.

A quick look at the facts as stated by the National Judicial Data Grid reflects the pending cases in the entire country as on 3.3.2017, a total of over two million cases (2,42,49,027) on the available data. Out of these 7,81,1272 are Civil cases and 1,64,37,755 Criminal Cases. In this 9.88% are pending for over ten years, 16.60% are over 5 years, 29.01% are over two years and 44.51%

are less than two years. The rate of disposal is very less compare to the filing of cases.[38]

According to various surveys and estimates of different institutions the unofficial data is over more than 3 million cases are pending across the country. There is one judge for every 73,000 people in India the lowest compare to a number of developed countries, with an average of 1,350 cases are pending per judge with a disposal rate of 43 cases per month. Compared to national average of judges, Delhi stands the worst ratio with 5, 00,000 people to a judge. At the other end, smaller states and union territories (UTs) such as Chandigarh, Goa, Andaman and Nicobar Islands, Sikkim, Haryana and Himachal Pradesh have at least twice as many judges per person, compared to the national average. Maharashtra and Uttar Pradesh stand out at either extreme. Maharashtra builds a backlog of more than 100,000 cases each month, while UP clears more than 44,500 pending cases each month. Karnataka clears about 34,000 pending cases each month. The national average is two pending criminal cases for each pending civil case. Bihar, Uttarakhand and Jharkhand have almost five times as many pending criminal cases to civil cases. At the other extreme, Tamil Nadu, Andhra Pradesh, Manipur, Himachal Pradesh, Karnataka and Punjab have a very low ratio.[39]

The above scenario of pendency of litigation not only dangerous to the judiciary but also fails to affectively provide access to justice that has been well built on the constitutional edifice. The timely access to justice as a prime concept of Rule of law, it needs to be achieved in all fronts in order to address not only dispute mechanism, but to remove the inequalities of economic, social, cultural aspects among the populace. To achieve this, it is beyond the tenacity of judiciary and judges to do it. The entire society need to stand after the judiciary, and other institutions, especially, the Legislature and Executive need to take corrective measure.

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[38] http://164.100.78.168/njdg_public/main.php last updated 3.3.2017.

[39] Mathur and Bolia, Twenty million cases still pending: In India's district courts, a crisis is revealed, First Post, (e-edition) March 03, 2017, http://www.firstpost.com/india/twenty-million-cases-still-pending-in-indias-district-courts-a-crisis-is-revealed-2712890.html.

The judiciary in order to tackle the situation basing on numerous debates, discussions, suggestions rendered by every possible organ of the polity,[40]has taken a number of steps to correct the system to address the maladies of judiciary, which are e-governance, Lok Adalat System, Social Action Litigation, Encourage of Alternative Disputes, etc. The Legislature also has taken few steps like creating fast track courts, Labour Courts, Family Courts, Consumer Courts, Economic Offences related courts, and a number of bodies like NHRC, NCRC, NCPRC, SC & ST Commissions, Backward Class Commissions, Commission on Right to Information, and a number of policy perspectives. However, all these have not yielded the results. In India as rightly pointed out earlier, through plethora of legislations, state itself became a creator of conflicts. And on the name of development of Economy and development of the Polity, takes a soft pedal approach to the violations of corporate sector,[41] the engineered policies of divide and rule for power sharing amongst the political parties, the lackadaisical approach of the Executive and Legislature

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[40] There are Nemours reports where in few have been referred here which are consulted for the preparation of the Lecture, See Chief Justice of Calcutta High Court's Report (1949);Judicial Reforms Committee, Uttar Pradesh (1952); 14th Report of the Law Commission of India (Setalvad Report) (1958); Report of the High Court Arrears Committees (1972); Satish Chandra Committee Report (1986); 121st Report of the Law Commission of India (1987); First National Judicial Pay Commission Report (November, 1999); Report of the National Commission to Review the Working of the Constitution (March 31, 2002); 189th Report of the Law Commission of India (February, 2004); Report of the Working group for the 12th Five Year Plan (2012-2017) Department of Justice, Ministry of Law & Justice, Government of India; Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice: 67th Report on Infrastructure Development and Strengthening of Subordinate Courts, February 2014; Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice: 27th Report on the Action Taken Replies on Law's Delays: Arrears in Courts, 2008; also see the centre for Planning and Research Supreme Court of India, Subordinate Courts of India : A report on Access to Justice 2016, supremecourtofindia.nic.in/Subordinate%20Court%20of%20India.pdf (last updatd 2.3.2017) et.al.

[41] International Commission of Jurists Report Access to Justice: Human Rights Abuses Involving Corporations, 2011, http://www.indianet.nl/pdf/AccessToJustice.pdf, last updated 3.3.2017.

to heed the reforms suggested, the profession oriented approach of the Bar, the inadequate funding of education sector, non-practical interdisciplinary approach of imparting law by the legal institutions, et.al., are also responsible for the on-going crisis of access to justice.

The lame duck policy of the state to empower the judiciary with financial autonomy, increase the strength of judiciary as voiced by think tank of researchers, judges, committees and commissions, public and private originations, the judiciary in every single opportunity it got to augment did its best by suggesting a number of measures on its own through judicial decisions and with the help of a number of research inputs doing its best to meet the constitutional objectives.[42]

In the *Salem Bar Association's* case,[43] taking note of the views of the former Law Secretary of India[44] developed on the basis of

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[42] Reports of the NCRWC, TSN Sastry Excellence in Public Service: The need for financial Autonomy to the Judiciary The Indian Journal of Public Administration, Vol. LII, 2006, PP 478-83, Y. K. Sabharwal, *Access To Justice Role Of Law And Legal Institutions In The Alleviation Of Poverty And Deprivation*, Inaugural address in golden jubilee regional seminar of Indian Law Institute at Cuttack, Orissa on 9t h September 2006, Justice L.M. Singhvi , Draft Declaration on the Independence of Justice, *E/CAN/Sub.2/L.731, E/CAN/Sub.2/481 and Add.l, and EICN.4ISub.2/1982/230, TSN SAstry Judicial Process And Human Rights in India.*
Indian Law Review, Vol V, 2013,56-69, RESOLUTIONS ADOPTED IN THE CHIEF JUSTICES' CONFERENCE, 2016,, Anil Rai v. State of Bihar, (2001) 7 SCC 318, et.al., All India Judges' Association v. Union of India &Ors., (1992) 1 SCC 119 ; All India Judges' Association v. Union of India &Ors.(1993) 4 SCC 288; All India Judges' Association v. Union of India &Ors. (2002) 4 SCC 247; Brij Mohan Lal v. Union of India (2002) 5 SCC 1 and Brij Mohan Lal v. Union of India (2012) 6 SCC 502.

[43] Salem Bar Association (II), Tamil Nadu V Union of India, 2005, 6 SCC 344, AIR 200 5 SC 3353.

[44] T.K. Viswanathan: Judicial Arrears, The Hindu, Nov 20, 2002, http://www.thehindu.com/thehindu/2002/11/20/stories/2002112001051000.htm last updated 4.4.2015.

Judicial Impact Assessment[45] in USA appointed a high-level committee under the Chairmanship of Justice Jagannadha Rao and senior advocates like Arun Jaitely, Kapil Sibal et.al as its members, and forwarded the report to the state for necessary action.[46]

In *Imtiyaz Ahmad*[47]the Court even directed the Law Commission to make recommendations to it the immediate measures that need to be taken by way of creation of additional Courts and other allied matters (including a rational and scientific definition of "arrears" and delay, of which continued notice needs to be taken), to help in elimination of delays, speedy clearance of arrears and reduction in costs. It also directed it to provide remedial mechanism state wise to redress the grievances of parties in augmenting the justice machinery to respect the constitutional hallmark of access to justice and the impact of delay in the enjoyment of rights.

The Law Commission through its report rendered a host of suggestions in restricting the judicial mechanism from the mofussil courts to the Supreme Court. It suggested mainly reiterating its previous blue print report of manpower planning of judiciary, to increase the number of judges from the present ratio of 10.5 to at least a minimum of 50 judges to million populations, structural requirements of the institution of justice et.al. In view of the huge number of backlog of cases, the commission also could not give a clear definition to the concept of arrears and left it again for the judiciary and state to think of situations wherein it can be interpreted according to the circumstances.[48]

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[45] TSN Satry, Judicial Impact Assessment as a Tool to Strengthen Access to Justice and Democracy in India: Lessons to Learn from the Experience of USA, KIIT Journal of Law and Society, 2016 Vo.6 No.1, 34-50.

[46] Report of the Task Force on Judicial Impact Assessment, Vol 1, 91-93, 2008, available at http://lawmin.nic.in/doj/justice/judicialimpactassessmentreportvol1.pdf, (last updated 4.5.2015).

[47] Imtiyaz Ahmad v. State of Uttar Pradesh and Ors., AIR SC 2012 642.

[48] The Law Commission of India Arrears and Backlog: Creating Additional Judicial (wo) manpower, 245th Report, July, 2014 and the various report of it cited there on the subject. lawcommissionofindia.nic.in/reports/Report_No.245.pdf (last updated on15.9.2014).

Pragmatic Approaches To Address The Problems Of Access To Justice and Judicial Pendency: A New Thinking

If rule of law is for all, if access to justice is for all, if equality is for all, the judicial dispensation of justice also needs to be done in its quickest fashion without any delay. Delay not only defeats equality but at the same denies equal access to justice. Pendency of litigation for generations has left a black mark on its progressive ad vocation of Social Action Litigation. All the craftsmanship of it sunk had lost the momentum due to huge pendency of litigation. One cannot blame the judiciary alone for the delay in rendering justice in the disposition of cases, As rightly pointed out by the former Chief Justice Thakur, LJ.,

> *The guarantee of equal justice is poignant because it subsumes not merely disputes between state institutions and citizens but disparate bodies of citizens, with vast income and resource disparities often pitted against each other as well as demands for decisions based on economic or commercial considerations, stretching court capacity beyond their limits*.[49]

Though the entire glory and confidence of people that they still repose on Judiciary, and the fine craftsman ship of work of judges, they do not have any magical wand in their hands to turn it around the way they want. It is the responsibility of all institutions and public at large to address the surrounded aspects of access to justice and needs to come forward to surmount them with determination not to miss the applecart of carrots that have been widely disseminated through constitutional contours.[50]

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[49] Supra n33, 1.

[50] TSN Sastry, Constitutional contours; Who owns the basket of Carrots, in Narayana,et.al. (Eds) Justice Triumphs Felicitation volume of Prof VRC Krishnayya, 2017, (Asia Law House, Hyderabad)135-144.

The paper is since concerned with access to justice and judicial pendency., the suggestions rendered herein are concerned only to the topic in discussion and not the holistic perspective of all aspects of access to justice. Whatever may be the perceptions of scholars, intergovernmental, governmental, non-governmental institutions, voluntary organizations and the think tank of the polity, in tune with the philosophical overtones of Cappelletti advocated long back that "Effective access to justice can thus be seen as the most basic requirement — the most basic human right of a system purports to guarantee legal rights",[51] the suggestions render herein are concerns for the augmentation of judiciary in the dispensation of justice with ease and to establish its credibility as an institution competent to augment the constitutional mandate of access to justice with ease. Further, a host of suggestions have already been rendered on this area, I would submit very few constructive suggestions, which may help the state apart from the ones advocated, especially the financial autonomy,[52] increase of manpower and structural facilities for the effective functioning of judiciary. Furthermore, without going into the methodology of appointments of judges to courts, which has rocked the friendship between executive and judiciary many a times, I submit the views expressed herein are a thought provoking with practical leanings, which needs a meritorious consideration by the state to augment not only the judiciary but to adjust the entire legal system, includes the legal profession at all levels right from the its impartation and the role of pedagogy to strengthen judiciary and as well to crystallize the real professional status of justice delivery system in toto.

In conquering with the ideological leanings of Judicial Impact Assessment advocated by the Supreme Court of India in the Salem Bar Association case, the author somewhere else had advocated that JIA is a welcoming feature, but due caution be exercised in its constitution, functioning and in tune with the social justice

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[51] M. Cappelletti, Access to Justice 672 (1976) cited in Justice A.K. Ganguly supra n31, 63.

[52] TSN.Sastry Excellence in Public Service: The Need for Financial Autonomy to Judiciary, IJPA, Vol. LII, 2006, 478-83.

ideology of Dr B.R. Ambedkar, especially first the state and its organs have to work out to bring in the concept of fraternity through common brotherhood.

Some of the suggestions made by the author in one of his earlier publication elsewhere [53] are reproduced for the benefit of the readers for a comprehensive view of Access to Justice. I quote here in two sets of important suggestions. One set are for the reform of Judiciary and another set are for the Legal Education for professional Competence. The suggestions I express here in both parts some of them require constitutional amendments. All the statesmen, political parties cutting across the party lines, the Bench and Bar without personality clashes, the media needs to come forward to achieve the constitutional goals of social justice. Above, scholars and legal institutions need to stand in unison to support the ideas expressed here in the larger interest by conducting seminars or undertaking further research to help the state to overcome the major problem of judicial pendency. The suggestions stated here if are taken seriously, certainly, the Country can bring back the ancient glory of India for its mythological famous Ram Rajya or Dharma Kshetra concept and can dispense justice at ease, to tinsel in the eyes of its counter parts of the World. I fervently appeal once again the academic fraternity to support the path breaking suggestions, would join me in propagating these ideals without any one-up-man ship of ideological leanings to strive to achieve the concept of justice and make every one of us to enjoy the basket of carrots that have been given to us the richly adored galaxy of intellectuals of the Constituent Assembly.

- The Supreme Court of India is facing a number of issues including volume of pendency of cases. Further, on one or other pretext at regular intervals often called to address some urgent matters, which may have political or national interests, which also disrupt its functioning including clearing of backlog. India being a cooperative federation, and the Supreme

[53] Supra n 46, 46-49.

Court has a number of jurisdictions to address wide variety of disputes, it is becoming difficult to render justice to parties at the earliest. In this scenario, without affecting its powers, the main seat of it at Delhi is left to deal with important constitutional and legal matters, which have wide ramifications.

- In such case, the country needs to establish at least two divisions of the Supreme Court amending the constitution. One branch be left to deal with Civil Cases and one be made in charge of exclusively of criminal cases and may be named as Supreme Court of Civil Judicature and Supreme Court of Criminal Judicature. These courts will deal with the appeal cases that come from various High Courts in the country. These courts will be only courts of disposing cases without seizing the administrative powers of the Supreme Court's main seat at Delhi. The writ jurisdiction that may be necessary to deal with the civil and criminal cases may be delegated to these courts. The decisions made by them should be ordinarily binding on the lines of the present Supreme Court decisions. The Supreme Court at Delhi be continues to be as Supreme Court of India and empowered to deal with original and advisory jurisdiction and constitutionally important cases including the administrative functions and monitoring the functioning of the offices of JIA, if created.

- The Supreme Courts of Civil and Criminal Judicature may be composed of not more than 10 to 15 judges of each. These courts may be headed by a Chief Justice of the Supreme Court of Civil Judicature, Supreme Court of Criminal Judicature. The Decisions given by these courts would have the same binding affect as that of the Present Supreme Court of India.

- After the judgment of these courts there should not be any provision of appeal to the Supreme Court of India. The strength of judges in the Supreme Court of India may be restricted to not more than 7 or 9 judges who could decide cases of constitutional importance or any urgent matters that need the attention of the judiciary. The Chief Justice of India continuous

to be the head of the SCI. Social Action litigation also may be entrusted to the main Supreme Court. All the powers vested with the Supreme Court of India may be attached to this constitutional court. Even it can be named as Court of Indian Republic, which would remove confusion between the other two proposed courts and also to leave behind the colonial legacy.

- The Chief Justice of India shall have all the powers as per the constitution of India including administrative powers over the three proposed Supreme Courts.

- The other two supreme courts may be constituted outside the Capital city of Delhi. Apart from reducing burden on the Capital and expenditure to the people of the county to run to the Capital, as these proposed courts dealt with normal civil and criminal matters, the seat of authority need not be in Delhi. These two can be constituted again outside the Six Metro cities too. They are already overcrowded and again this will lead to further burden. One of them may be established in Bhopal or Nagpur and other may be placed in the Southern Part of the country.

- By dividing the Supreme Court like this, the Indian Supreme Court certainly could guide the country through number of ways and means and can be equivalent to that of the Supreme Court of USA in evolving furthermore quality judgments to help the legal system with much more dynamism to nurture the principles of Social Justice, as advocated by the legendary son of India DR. Babasaheb Ambedkar.

- Apart from the proposed two Supreme Courts, a Supreme Court of Arbitration needs to be established to encourage Arbitration. In this court along with regular judges, senior professors of Law and Advocates of repute may be considered having exposure in Arbitration on adhoc basis to settle the matters quickly. This court may be entrusted only to decide all types of matters of Arbitration. This Court may have not more than 5 judges and adhoc judges to the tune of not more than

five depending on the expertise and necessity of the case on the lines of ICJ.

- This court is necessary as in the present era of economic Globalisation; the state is more inclined towards economic development and investment. According to the principles of International Law and Conflict of Laws, Arbitration is a most important tool; wherein if the disputes of corporate sector are addressed at quick span, definitely India would be the future destination of settlement of disputes and trade investments.

- All the commercial disputes including matters relating to taxation, conflict of laws, international matters, need to compulsorily be referred to only Supreme Court of Arbitration, whose decision shall be final and no appeal should lie.

- The age of retirement to the judges of the Supreme Courts of Civil, Criminal Judicature, and Arbitration may fixed at 70 and the judges of the Supreme Court of India or Court of Indian Republic may fixed at 72 years and that of the Chief Justice of India maybe fixed at 75 years. This will not only help the experience of the Judges, and to avoid the regular change of CJI's due to lack of tenure on the ground of age.

- In all the above courts, the proviso Art. 124 (3) (C) of the Constitution, of eminent persons, especially senior professors of law of the country may please be considered for appointment which has not been used in the last seven decades. At least for the Supreme Court of Arbitration this provision needs to be taken into consideration, since matters of international law and conflict of laws requires more of comparative perspective, wherein senior professors teaching the subjects with long years, certainly contribute their research skills in assisting the courts and clients.

- At the level of the states, the High Courts too may be divided into High Court of Criminal Judicature and High Court of Civil Judicature with a Chief Justice of each for the courts independently. These need to have at least 15 judges in each

high court excluding the Chief Justice of Criminal and Civil Judicature. After the judgments, appeal may lie only to the respective proposed Supreme Courts only. Apart from these individual High Courts, there should be a High Court in every State Head quarters with not more than 9 judges, to deal with important legal matters relating to constitutionally, socially relevant important matters, issues relating to state and other institutions. The proposed High Courts of Criminal and Civil Judicatures also should be in other parts of the State than in the Place of the High Court.

- The present retirement may be increased from 62 to 65 years to the Judges to the High Courts of Civil and Criminal Judicatures, and 67 years for the judges of the High Court 68 years to the Chief Justice of the High Courts.

- All the judges including the judges of the High Courts of Civil Criminal Judicature along with the High Court of the State may be elevated to the proposed Supreme Court of Civil Judicature and Supreme Court of Criminal Judicature and Supreme Court of Arbitration and from there on to the Supreme Court of India by seniority plus disposal rate of cases and contribution to law be taken into consideration than on the basis of state representation, and other criteria.

- At the Dist level, the present District and Session Judge's court may be divided into District court of Civil and Criminal cases. The Present Dist and Sessions Court may be re-designated as district court of Administration of Justice with a senior most judge to look after both the administration of all the courts including the two dist courts and to aid and assist the Dist administration and lower courts grievances. The similar pattern may be followed in the lower courts also be bifurcated as Munisf and Magistrate respectively to deal with civil and criminal cases like the higher courts to look after the work of respective fields of litigation without any interference of one court into the other courts work. Promotion to the higher courts by the Judges of these lower courts may be considered only on

the rate of disposal of cases with quality judgments apart from seniority.

- To dispose of the huge back log, the retired judges, and other judicial officers till the lower tier, along with senior Law Professors, adhoc courts may be constituted for a period of five years to dispose of the cases pending before the various courts in the country up to State Level. In the national level also, adhoc courts may be constituted for a period of two years to dispose of cases which are pending for more than five years before the SC. The rest of the cases may be transferred to the proposed Supreme Courts for disposal. This is not only cost effective method but also render quick justice to the parties.

- In the Lower courts up to dist level, too adhoc courts may be constituted during winter and summer periods to clear the pending cases. At present the law teachers are prohibited to practice. If Law degree needs to be professional orientation on par with medicine, law teachers may be permitted to preside over the benches in the lower courts along with retired judges to dispose of the pending cases. They may be given training and during the winter and summer breaks they may be employed to clear the huge backlog of cases.

- As it is prevalent in the country today, the teachers of law have best theoretical knowledge than practical experience. They need to have practical experience. Then the teaching would certainly be an asset to teachers of law to teach conjoining both theory and practice. Further the law depts. and colleges may be brought under 5 day week and every Saturday the law teachers may be permitted to sit over the benches along with retired judges to dispose of cases. They may be appointed in special courts like consumer courts, human rights courts and other labour and family courts and small cause courts to dispose of the petty cases.

- In the entire country the education, syllabi and research facilities including vacation in legal stream needs to be brought in under one umbrella. Experts may be identified to preside

over various courts to clear cases. This would certainly help the judiciary to clear the back log and help the teachers to gain sufficient practical knowledge bringing more professional orientation to the legal education. The professors with research publications, experience of their teaching may considered for selection as judges. This may not be objectionable to Bar Council, since law teachers are not practicing but helping the state in the judicial back log and this would certainly bring in the desired results of social justice.

- By appointing professors on the basis of their specializations, it is easy to identify professors of various aspects of law and could be considered and also the various special courts advocated under different legislations like Human Rights courts, Child Rights courts, and Women's Courts could be easily gauged up.

- Any number of courts are established, it is difficult to clear the back log. Since the SC has already held that JIA is the need of the hour, and the model may not be workable in India, the suggestions render above are not only germane to the country and also serve as best alternative to JIA as the Executive and Legislature may not be able to do proper assessment of litigation based allotment of funds to judiciary to render access to justice. The implementation of the suggestions not only could clear the back log at the earliest but also help the state without spending huge amount of expenditure as compared to increase of judges and courts which is the one of the important components of JIA.

- The adhoc courts constituted from dist to High Court level may be considered on par with regular court judgments to clear backlog.

- Apart from the above, the judiciary is unnecessarily overburdened by entertaining every sort of litigation with over enthusiasm. The judiciary needs to show restraint and make the Legislature and Executive to discharge their roles instead of itself entertaining unnecessary legislation and framing rules

and regulations in the absence of law. For example, in a recent judgment of a PIL in *ShyamNarayan Chousky*,[54] whether the citizens need to stand or not when National Anthem is played in cinema halls, is a matter to be considered by the Executive than Judiciary. It is not to criticize the activist role of Judiciary, but such type of issues certainly overburdens the judiciary, which may not be able to cater to the needs of real issues that need its attention.

- For regular reforms in judiciary and the legal intricacies, which require through research, the law colleges, law universities and the traditional Law Departments be entrusted with research projects to supplement the judiciary with their inputs. This will reduce the gap between the judiciary and legal fraternity of academics. This will certain change the orientation of imparting legal education in the country.

- The judiciary frequently resorting to contempt of court proceedings, it is creating a fear in the minds of the people and the legal scholars to freely express, to suggest the gaps in its functioning and judgments. This would certainly leads to develop a fear consciousness towards judiciary than to have a friendly atmosphere. Well contempt of court proceedings is necessary, but using it for every trivial matter of comments, the judiciary not only lowers its reputation as a guardian of people's rights and remains as a disjunctive authority for free access to justice. The judges and judiciary are considered as the hallmarks of fountain of justice of a country, they need to have more patience to encourage in pardoning the mistakes of people with an admonition than strict legal procedures.

- Further, it is a submission to the great learned judges to develop a friendly atmosphere with the executive, legislature and especially with the academic fraternity of law than showing their hegemonic style of segregating as a class of their own with strict rules of reserve. The more and frequent

[54] *Shyam Narayan Chousksey V Union of India* Writ Petition(s)(Civil) No(s). 855/2016.

interactions between legal academics and judiciary certainly takes a way forward to create good lawyers and to cultivate professionalism in the future law students of the country.

Reforms at the Professional Educational Level

Apart from the above, I suggest the following as a back bone mechanism to prevent future recurrent problems to judiciary in providing access to justice which is an important tool in empowering the people of all strata, especially the disadvantaged and vulnerable groups to establish the constitutional ideals of justice, liberty, equality and fraternity.

- At present the entire legal education in the country is regulated by the Bar Council of India. The entire legal education in the country is more concerned to produce good lawyers, attorneys and legal advisors to corporate sector than to bring in quality judges from the lower rug of the judiciary. There exist a vast difference in imparting legal education to lawyers and judges. The training and the discourse of judges needs principally independence, impartiality, integrity, equality, propriety, and, finally, competence and diligence. [55]

- In the globalised era judicial education and discourse with periodic training to judges is gaining more important than yester years.[56] Judges, especially, at the apex level needs to be more research activists than to be rendering their duty of disposing of cases in tune with the legal principles. Many a times, they need to be interpretative and as their judgments need to be monumental with precise perspective instead of lengthy facets of discussion with sections and subsections. As rightly pointed out by Prof Baxi, at least after retirement, the higher court judges need to involve more

[55] The Bangalore Principles Of Judicial Conduct (2002), available at http://www.unodc.org/pdf/crime/corruption/judicial-group/Bangalore-principles.pdf. (last updated 17.5.2010).

[56] Geeta oberoi, Developing in Judicial Education Discourse, 2012 (Thomson Reuters, New Delhi).

themselves the role of trainers to train their counter parts and associate with the legal fraternity of academics in research and to train the future legal professionals and judges. The involvement of their help not only the judiciary, but the prosecutors, police officials and also crafts good professors to learn the practical experience of the Bench in dealing with cases.[57]As suggested above, the involvement and friendly attitude of judges, especially that of the apex courts would certainly bring in a number of changes in the law and legislation perspective in the country to achieve access to justice in different facets.

- The involvement of judges with legal education also helps to overcome the training that is imparted to their juniors. Mostly the judges train in judges only their experiences on bench legal skills and techniques of rules of interpretation from the dispute settlement point of view[58] than to usher the significance of broadening of knowledge with positive interpretative skills of interdisciplinary perspective. It also makes the Universities and law College to enrich and have clear professional calibre and could develop more professional oriented research with practical perspectives than the theoretical exposition.

- The Legal education and the syllabi need to be kept out of BCI. The present teaching of acts and theoretical principles makes the law student mechanical machines of legal principles without knowing the significance of their practical applicability. As suggested above, if the apex court judges and retired judges take the lead to join academics, it would certainly help to develop practical orientation of impartation of legal knowledge than mere repetitive practices of legislations, sections and subsections. As rightly observed by Rhode, "Legal education plays an

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[57] UpendraBaxi foreword *ibid.*

[58] Sande L. Buhai, VedKumari, Amari Omaka C. Stephen A. Rosenbaum, The Role of Law Schools in Educating Judges to Increase Access to Justice, 2011, Berkeley Law Scholarship Repository, http://scholarship.law.berkeley.edu/facpubs, (last updated 2.1.2014).

important generation of lawyers, judges, and public policymakers, gatekeepers to the profession, law schools opportunity and obligation to make social priority."[59]

- The judges joining the teaching it would be a great contribution to develop the Legal aid cells, the Law departments and colleges will serve as dispute settlement organs and the students could learn the practical orientation from the beginning of their career studies. It would certainly mould the future lawyers and judges like Justice P.N. Bhagavati, Justice Krishana Iyyer et.al., with more responsibility with progressive thinking a number of great judges who could make the judiciary more sacrosanct and could able to prevent unwanted elements to enter into the corridors of Justice.

- The Executive and Legislature too need to mend their ways in empowering the judiciary, especially in granting the financial autonomy. In spite of number of suggestions rendered by various quarters, the negligent attitude of Executive crippled the judiciary to a great extent. The Executive instead of resorting to confrontation with the judiciary need to discharge its role as a guardian of access to justice and stand by it in the hour of crisis.

- There are a number of laws are there in the country. The plethora of legislation with intricate clauses makes the state as a party in majority of the legislations. It is better the state remove a number of unwanted laws. The present government recently removed more than 1, 200 legislations. However, it needs to remove many more legislations, and avoid passing too many legislations and regulations at frequent intervals.

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[59] Deborah L Rhodes, Access to Justice 193 (2004) in Stephen Wizner& Jane *Aiken Teaching And Doing: The Role Of Law School Clinics In Enhancing Access To Justice*, 73 Fordham L. Rev. 997 2004-2005.

- Drafting of legislation and interpretation requires expertise with simple language. Instead of entrusting various officers to draft legislations, the Government needs to entrust the work to different law universities and law departments of Universities. The governments both at the Union and State level have to create legislative funding and entrust the legislative drafting work to the academicians on the lines of USA which has delegated the entire work to Columbia University way back in 1911. The University after a considerable research frames the legislative framework and passes it on to the congress for consideration. In similar lines, the Union and the states need to constitute such research funds and involve the law professors and retired judges of apex courts to join in strengthening its hand.

- The legislature and Executive instead of sitting pretty, as a cooperative federation need to weed out to complications in their relations and legislations and bring in compromise like the GST and redraft a number of legislations, especially legislations of public utility service laws, to empower people to freely exercise their rights than creating complications. The unnecessary procedures, fines for petty wrongs need to be weeded out of punishment purview. That would certainly weed out a number of cases before the judiciary and help people to access to justice freely

- Last but not the least, in the intermingling world of economic, social and cultural dependency of states has increased compared to previous periods. The Govt of India too opened its economy and invites foreign investors to come to India for investment. However, there is no legislation directly regulating these aspects. Because in the contemporary era, the litigation between parties is wide open and mostly involves foreign elements. In India unfortunately, the provisions are rarely spread across various laws, and no legislation is there on conflict of law or Private International Law. The judiciary many a times made to look for the common law traditions set by British Judiciary in disposing of cases. The investment and

economic agenda of a country could be strengthened only with the help of legal backing and not by widely inviting them to invest in India. In order to make the nation rich and to address the concerns of the foreign investors, a clear legislation on Private international law has to be enacted and at the same time, the various laws including the procedural and commercial laws needs a redraft with new enactments. In such event, the proposed Supreme Court of Arbitration would certainly be handy to address disputes of foreign aspects.

Conclusion

If we keep our laxities on the implementation of access to justice especially at ease to the courts as per the mandate of the constitution, as rightly pointed out by M.C. Setalavad "In so far as a person in unable to obtain access to a Court of law for having his wrongs redressed ….justice becomes unequal and laws which are meant for his protection have no meaning". Hence to protect and promote the interests of the common man and the citizens at large , apart from the judiciary every one of us has responsibility to address the concerns not only to redress the maladies of judiciary by considering the above positive suggestions, to avoid the judicial crisis and bail it out from the burden of judicial pendency. In conclusion, I fervently appeal all concerned to discuss, deliberate the suggestions discussed here in to evolve practical solutions that are necessary for the progress of the country, than to resort to mudslinging on each other to achieve the Constitutional dictum of Social Justice through "Access to Justice."

South Asian Rivers: Conflicts and Cooperation

Jyoti[*]

Rivers in the South Asian region has several geographic features unique to themselves. The river system in the different regions of South Asia has been responsible for shaping the geopolitical consequences for the post-colonial states in the region. Most of the major rivers in the region like the mighty Ganga, Indus and Brahmaputra originate from a common source i.e. the Himalayas and its different glaciers. Each of these major rivers is perennial and has their own organic system characterised by different tributaries, deltas, islands and streams. The three major rovers mentioned above flows through different states and cross through their different regional boundaries influencing the human ecology of the people living there. The coastal dwellers, farmers, cargo movers, fishing community, traders and other dependents on these rivers living across the different regional boundaries which these river flows through are benefited by them. As agriculture forms the main economic activity for livelihood in the subcontinent, these river systems, these rivers have created complex geopolitical relations in the region.

In the past, the riparian states had few disputes regarding the sharing of river water flowing through different states, for example the undivided Punjab had such disputes in the past but in the pre-colonial era, these disputes were handled with restraint. In the post-colonial era, with the independence of the different nations and new states being formed, there has always been a lack of such efforts towards managing the water disputes in the region due to more than one reason. The partition legacies and the attachment of intense nationalist emotions trigger sharp reaction to any river development initiative by neighbouring states. In the recent years,

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the disputes surrounding the sharing of river water resources have shifted to the centre stage of the South Asian political rivalries. The chances of these tensions going further high is inevitable as almost all the states in the region have registered a steep increase in their population in the past decade. It is not just these demographic features which have been exerting heavy pressure on the available water resources; it is also the quest for rapid economic development in the entire region and a race for the same that has further fuelled the disputes.

On one hand, there are disputes which are directly related to the 'water crisis' that is looming over the entire region. The many reasons responsible for this are the rapid increase in population, urbanisation, industries, intensive irrigation, agriculture among many others which has resulted in both overuse and misuse of water resources. This has resulted in water fast becoming a scarce resource, both in terms of quality and quantity. The same has also resulted in the accelerated conflicts between the different riparian states, both between the different states in the same country and also between different countries in the region.

On the other hand, the water tensions can also be attributed to the turbulent history of South Asian region. The region has witnessed many wars, and is an area where protracted violent conflicts and border disputes abound. The latest example for the same is the India-Pakistan tussle over the Indus river water treaty. It has also been seen that many of these types of conflicts in the region have been taking forms of environmental disputes. Simultaneously, various environmental issues are getting regionalised and politicised.

Majority of the regional states in SAARC have adopted the growth-led economic strategies which is changing the nature of demands towards utilization of water. Growth sectors such as

housing and real estate development, hotel and tourist industry, industrial parks and special economic zones, hydroelectric projects and many other high growth sectors and infrastructure projects are the high consuming sources of water. Urbanization and the diversion of fresh water sources to cater to the consuming needs of the urban population tax heavily the water resources. These diversified water resources are most often at the cost of the irrigation sector which of course is the highest source of river water utilization. But, the prospect of farm sector losing its traditional priority in water utilization cannot be wished away. Together the demands of the growth sectors combined with the traditional irrigation dependency on water will be exerting greater pressure on the domestic economies of the regional states. And, commensurate with such increased water dependency the potential for rifts over river water rights between the co-riparian countries is imminent.

As mentioned above, the partition of the river over its natural flows and that of its different tributaries fuelled regional tensions in the subcontinent. The different developed and underdeveloped states of the region have not been able to have a common norm for the management of the water resources of these rivers and its different tributaries judiciously. India, which shares borders with almost all the nations of the South Asia, is both an upper and lower riparian, and is a giant in terms of its size (and economy) when compared to Pakistan, Nepal, and Bangladesh. It is not a surprise that tensions have arisen on many occasions between India and all these other water sharing countries due to this lack of rules and also due to additional political and other reasons. As the country is perceived to be a 'hegemon' by most of the countries in the region and also that there is a lack of trust between these countries, the disputes of water sharing has been persistent in the region. Water has been a serious tension point between India (upper riparian) and Pakistan (lower riparian); between India (upper riparian) and Bangladesh

(lower riparian); and between India (lower riparian) and Nepal (upper riparian). Additionally there are international water courses in this region, which are shared by two or more countries. The Koshi River of Nepal, for example, originates in China, and passes through Nepal before joining the Ganges in India and flowing into the Bay of Bengal via Bangladesh. Yet another example is the river Brahmaputra, which originates in China, passes along with its tributaries, through India and Bangladesh, and flows into the Bay of Bengal.

The South Asian subcontinent, although, has a large number of rivers and water being significant for the basic livelihood of the people is not been able to formulate and establish any legal regime for the sharing of river water. There are a very few bilateral agreements (and no multilateral agreements) governing the shared use of the concerned rivers. The bilateral agreements signed are not without disputes. There are a number of issues involved with the agreements including issues of the rights of riparian states, upstream-downstream syndrome, so on and so forth. These bilateral treaties are by and large India-centric in the sense that each of the treaty in force is between India and one of its co-riparian states viz; Three bilateral treaties to share the major tributaries of the Ganges —the Koshi, Gandak and Mahakali (in India known as Sharada) —have been signed between the Government of India and Nepal in 1954, 1956 and 1996 respectively. The Government of Bangladesh and India have signed a Farakka treaty on sharing of Ganges River in 1996. The only international water sharing treaty that exists between India and Pakistan is the Indus Water Treaty of 1960.

Furthermore, continental South Asia is the most populated region in the world with about one fifth of the global population thereby increasing the demand for food and water. Apart from this, water is also connected in South Asia because of is purity, fertility and

spiritual nourishment. Its great value is a deep and central element of the millennium culture. Hence, rivers in South Asia are the life and blood of these countries. For instance, Bangladesh is significantly dependent on water from the Ganges and the Bhramaputra for the purpose of irrigation and drinking. Nepal is among the richest in terms of availability water resources and it is the most important natural resource of the country. The country is very much dependent on river waters for harnessing its immense hydroelectricity potential from the many tributaries of the Ganges.

It is argued by critiques that the benefits of river water sharing have been unequal and over politicized. It is alleged that water sharing has not been done in line with the present and future water needs of the riparian countries. Each country is trying to get the larger share in water thereby by creating more space for disagreements and disputes. It is because of these reasons that most of the negotiation processes have been unsuccessful in leading to a basic framework for sharing of river water for peace, security and regional cooperation.

The need for a regional initiative toward developing a consensual approach to sharing and harnessing the river waters by the riparian states is overdue. The prospect for developing a regional Interstate River Water Management (IRWM) system cannot be ruled out. Exhausting resources and increase in demand, resulting from ever growing population as well as industrialisation is likely to make a compelling need of such an arrangement under international law.

V J Taraporevala, Law of Intellectual Property, II Edition, Published by Thomson Reuters, New Delhi, 2013.

Dr. Manish Yadav[*]

Intellectual Property[1] Rights has been a matter of concern and discussion worldwide since 18th century. These rights are the rights generated on anything created by intellect of the creator/ inventor. Initially it was known as the Industrial Property Rights but later became Intellectual Property Rights (IPR). There are various subjects covered under the umbrella of IPR like Patents, Copyrights, Biodiversity, Layout Designs, Trademarks, Geographical Indications, and Integrated Circuits.

The laws related to IPR are boons not only for the inventor or creator or proprietor of goods but also for mankind as the laws of IPR are back bone for industrial growth of the country which is directly or indirectly affected to the common man of this country. IPR can be a mile stone for the industrial and technological progress, economic growth and socio-economic situation of any country if it can be spread and reached to the masses in its real sense. Awareness of IP laws and avoidance of

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[1] The term property is a legal term. In legal sense it means a bundle of rights. 'Right' generally means a legal relations enforceable by law between persons in relation to a thing, tangible or intangible. The bundle consists of four rights: right to posses, right to use, right to alienate and right to exclude others from possessing, using alienating. "Property" does not merely signify a legal relation between a person and an object rather it signifies a legal relations between persons in relation to an object.

imitation of any original thing among people can be the latest version and vision for protecting their own rights.[2]

This book offers a valuable contribution to contemporary legal literature, providing deep insights into the interface between law and intellectual property, highlighting emerging issues and providing meaningful solutions to current problems. It will be of interest to a broad readership, including academicians, lawyers, policy makers and scholars engaged in interdisciplinary research. Where this book will not bore the readers at any point as it support the text with interesting illustrations and examples.

This book offers a comprehensive exposure to Intellectual Property Laws in India. It is the updated version of the first edition, covering the latest provisions of The Copyright (Amendment) Act, 2012 and decisions of the last seven years for revising and updating this edition. It provides an unparallel coverage of Patent, Copyright, Trademark and Design Laws in India. It Quotes the latest cases from national and international journals and reports. Also it gives the detailed commentary on confidentiality and passing off.

In the context of examining and analyzing the social and legal implications arising from the recent conjunctions in the field of intellectual property law, the book does not have a centralized focus on any particular area but covers all the aspects of intellectual property law, focussing on every field, whether, it is patent or trademark or copyright etc. The book presents a critical examination of intellectual property laws and practical issues related to national and international approaches in order to gather the common issues and the differences between them.

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[2] Chirag Bhatt, 'IPR and Common Man' February 2015 1<http://www.lawyersclubindia.com/articles/IPR-Common-man--6540.asp> accessed on 17th February 2015.

The Framework of The Book

The framework of the book is different from the ordinary format, where instead of chapters, the book is divided into parts.

The **Part-I** of the book introduces readers with the common and fundamental features of intellectual property law as before going into further details one should know the meaning of the topic to which author has given quite an importance by giving the general meaning of the property, meaning of Intellectual Property and its certain features. Also this part deals with the evolution of the law of intellectual property and gives the summary of certain foreign decisions regarding the similarity of patent law in India and Britain.

Part-II is dedicated to one of the most important field of IPR law that is patents. Author has dealt with the broad aspects of patent[3] in IPR by dividing it into 7 chapters. Each chapter deals with different aspects of patent. Part I initiates with the gist of historical background as well as giving the meaning and purpose of a patent. Further telling what should be the subject matter of the patent that is what all can be termed as patent but what all has been omitted from the list of patents and are not to be considered as patents are also covered under this part. An another chapter of this part deals with invention and its attributes, the trinity requirements of an invention, further giving detailed explanation to these essential requirements. The fourth chapter discusses the disqualifications, oppositions to patent and revocation of patents also explaining the concept of priority date and also providing with the provisions to appeal and where to appeal by discussing the Appellate Board and courts. Further the author has tried to reserve and make the readers

[3] Patent' means 'open'. The antonym of patent is latent which means hidden. The term 'patent' is an abbreviated form of 'letters patent' derived from the Latin *literae patentes* meaning open letter.

aware of the rights of the patentees by dedicating a chapter on rights of the patentee and restrictions on these rights. Specification and claim drafting is the most important, tricky as well as technical part of any patent application, which author has discussed in chapter six, and has also covered one of the persisting hindrances that is infringement in a detailed manner by trying to cover each and every aspect of infringement. In the conclusion to this part, the author has given the international aspects of patent by giving different international arrangements and providing with some of the landmark judgements by international.

In **Part III**, the author has dealt with another important Intellectual Property Right that is Copyright. Copyright is a property but it consists of intangible rights. Copyright, initially was for the artistic and literary work, as everything changes, its scope also widened, thus, covering musical, cinematographic work and computer programmes as well within its ambit. In this part the author has given a broad explanation of copyright by giving its meaning, what all works are protected by copyright law, and what is originality of work[4] in order to seek copyright. Also the author has given a good weightage to the rights and restrictions on these rights of the authors and the owners. It is important to study infringement of any work in order to study true meaning of Intellectual Property, and this was very well taken care of by the author and so he has discussed infringement of copyright by referring to particular categories of work. The author has also provided with the detailed information about the remedies that one can seek, what are the statutory authorities established for the same along with the leading precedent for the matter in question. And at last some

[4] The term work is defined under Section 2 (y) of the Copyright Act as under: "work" means any of the following works, namely:-
(i) a literary, dramatic, musical or artistic work;
(ii) a cinematograph film;
(iii) a sound recording.

foreign works along with international scenario of copyright has been discussed by the author.

Part IV deals with designs[5]. Author has given meaning of design and what is the registration process and how to apply for registration of the design and what is the filing procedure for the same. Author has also discussed the Indian Design Act, 2000 in detail. In the later part, the author has dealt with cancellation of registration, infringement of right and what is the reciprocal arrangement with UK and other convention countries.

The **Vth Part** is divided into further two parts that is VA and VB. In **Part VA** the author has put great emphasis on Trademarks[6]. He has tried to cover almost all concepts related to trademarks. Initially the author has explained the concept of trademark along with its origin and history. Then the categories of trademark have been explained in a very well manner. This part further leads to the registration and principles of registration of a trademark. Further are given the details of facets concerning confusion of a trademark as trademarks is one kind of intellectual property right that involves lot of confusion with it because of reasons like similar pictorial representation of a similar existing trademark, identical marks for different goods, and so on, which all have been covered by the author under this part. Trademarks, as author has explained earlier can be of different types, so there are some special

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5 According to the Designs Act a design (Section 2(d) of the Designs Act, 2000.) means: "[O]nly the features of shape, configuration, pattern, ornament or composition of lines or colors applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye."

6 Trade mark is defined (Section 2(1)(zb) the Trade Marks Act, 1999) as follows: *Trade mark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of good, their packaging and combination of colors*.

provisions for different types of trademarks which have been further laid down in this part. Once the trademarks are registered, how they can be used and by whom, is also dealt by the author along with their grounds of removal and also in case of error, how they should be rectified in the register by the registrar. Infringement as by other intellectual property is also faced by the trademarks, but remedies for the same are given for the trademarks as well. And the author has given it quite a weightage by giving details for the same like what is infringement of trademark, what constitutes infringement, defences for the same and what are the remedies available with the trademark owner against any infringement. In this part, instead of providing with the foreign legislations and judgements, the author has given the pending proceedings before the High court now has been transferred to the board, thus marking conclusion to this part.

In **Part VB**, author has dealt with Geographical Indications[7] of Goods (Registration and Protection) Act, 1999. The author in this part has explained the concept of geographical indication as per the act. The author has provided with the reasons for enactment of this act. How to apply for registration of a geographical indication and what are the grounds of refusal of such application. He has given the difference between trademark and geographical indication, further giving the effects of registration and infringement remedies available with such effect. Whereby concluding with the power of

[7] The Act defines geographical indication (Section 2(1)(e) of the GI Act) thus:"geographical indication", in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

central government to issue notification to the citizens of convention country.

There is something very unique about this book that is its **Part VI**. In this part the author has explained the concept of passing off in a very detailed manner. Usually in other books this concept is dealt with trademarks itself but in this book it has been given quite an importance by the author. Passing off is a term given for infringement of unregistered trademarks. In this part the author has initially given an introduction to passing off and has given the difference between passing off and infringement of trademark. Later he has explained the principles and ingredients of passing off and what are the varied features of passing off. Passing off can be of different types and this has been very well focused by the author in this part. Passing off is an infringement of unregistered trademarks. The author has marked conclusion to this part by giving the jurisdiction for the same, what can be the cause of action for it, what are the reliefs available and the defences one can take.

Usually it is known as trade secrets as an intellectual property but the author rather titled it as confidentiality of information in **Part VII** of this book. Further this part has been divided into two chapters, where 1st chapter deals with meaning and scope of confidentiality and the 2nd chapter is about the communication and breach of confidentiality of information and their defences and remedies available for the same. In these two chapters, the author has given ample of information for the same and dealt with different though important topics like the doctrine of confidentiality, areas of confidentiality information, means of communication of confidentiality, breach of confidentiality agreement, defences can be taken nd remedies available for the same, provision of confidentiality laid down under cyber law and what injunction can be sort for such breach.

In **Part VIII** the author has put a compilation of primary topics like constitutional rights and remedies, administrative law, equity and common law. The author has also depicted some legal doctrine and logical conclusions, judgements and precedents along with some foreign laws and judgements. This part also explains the meaning of certain legal terms and phrases, what is the nature of exercising of appellate powers. This part also gives the gist of certain interim orders of exceptional nature. Overall in this part the author has tried to cover each and every aspect relating to Intellectual Property Rights.

In India, there are various acts and statutes to govern the property rights whether tangible or intangible. The author in **Part IX** has dealt with the legislations prevailing in India for the Intellectual Property rights. Following statutes has been laid down by the author in this part:

- The protection of plant varieties and farmer's rights act. 2001
- The semi-conductor Integrated Circuits Layout-Design Act, 2000
- The Biological Diversity Act, 2002
- The Information Technology Act, 2000.

Further, if researcher or sponsor conducting the research gains any benefit, the equitable sharing of that benefit must also be recognized. The author insists upon a careful application of IPR. He also suggests that there should be clarity regarding different kinds of Intellectual Property Rights.

The author has tried to focus on every important aspect of every type of intellectual property right and he has achieved it to a great

extent through this book, as in each and every part whether in part II that is patent or part III copyright, this book covers almost everything about that right. The book does not emphasize on any specific right but collectively analyses each and every right in a detailed manner, covering all the aspects from definition to registration, infringement to remedies, everything has been explained in a very well manner. This book is a comprehensive exposure to Intellectual Property Laws in India. And everything has been equipped with detailed explanation, accompanied with case laws and recent judgements from Indian courts as well as International judgements.

Reviewer's Opinion

This is a fabulous book, engagingly written, can change the opinion towards Intellectual property rights, covering latest amendments in the copyright law thus paving better approach towards the study of Intellectual Property Rights. A worth book to have in one's collection.

Friendship is a flowing river If our commitments are honest, India and Bangladesh can achieve many things that are beneficial to our people

The Hindu, India, April 07, 2017

Sheikh Hasina[*]

Maintenance of good relations with the neighbours, friendship to all, malice to none — is the policy I pursue throughout my life. My only desire in my political thought is to build a society for common people where none will suffer from the curse of poverty while their basic needs will be met. In other words, they will get the opportunity to have the right to food, clothing, shelter, medicare, education, improved livelihood and a decent life.

I received the teaching of such sacrifice from my father. My father, Father of the Nation, Bangabandhu Sheikh Mujibur Rahman, did his politics with a motto to change the lot of the people. Wherever there was an injustice, he would protest it. This was the policy of Bangabandhu and he was always vocal for establishing the rights of the people. And, for that reason, he had to embrace imprisonment time and again and endure persecution. But he remained firm on the question of principle. Bangladesh earned its independence under his leadership.

The support and cooperation of neighbouring and friendly countries had accelerated our goal to earn the independence of Bangladesh. Among those, India played the leading role.

India's helping hand

The Pakistani military junta started a genocide launching armed attacks on the innocent Bangalees on March 25, 1971.

[*] Sheikh Hasina is the Prime Minister of Bangladesh.

In the 1970 general elections, people of Bangladesh voted for Bangladesh Awami League and made it the majority party. This is for the first time that Bangalees had got the mandate to rule Pakistan. Although the population of East Bengal constituted the majority in Pakistan, the Bangalee nation was subjected to oppression and subjugation all the time, and deprived of its rights. The nation was about to lose its right to speak in the mother tongue. It was unthinkable to the military rulers that the Bangalee nation would ascend to state power and that was why they imposed the uneven war on Bangalees.

With the people's mandate, the Father of the Nation declared the independence of Bangladesh and directed the people to carry on the war of liberation. Responding to his call, the people of Bangladesh took arms and the liberation war began. The Pakistani rulers and their local collaborators engaged in committing genocide, rape, looting, arson and attacked the innocent people of Bangladesh. The world woke up. People and the Government of India stood beside the oppressed humanity. They gave food and shelter to nearly 10 million refugees of Bangladesh. They extended all-out cooperation in our great liberation war and played an important role in creating global opinion in favour of Bangladesh. This helped us to earn victory and the country was freed from enemy occupation.

We are grateful to the friendly people of India. The Indian government had played an important role even in getting Bangabandhu released from the Pakistani prison. Shrimati Indira Gandhi had played the leading role in earning our independence, freedom of Bangabandhu and bringing him back to his beloved people. We got her government, political parties and above all the people of India beside us during our hard times.

The killers brutally assassinated the Father of the Nation on August 15, 1975. I lost 18 of my family members, including my mother, three brothers and sister-in-laws. I, along with my younger sister

Rehana, survived as we were abroad. In our bad days, India again stood beside us. I could not come back home for six long years. The Bangladesh Awami League elected me its president in my absence. I returned home with the support of the people.

In Bangabandhu's foosteps

On my return, I started a movement for the restoration of people's basic rights and democracy. We formed the government in 1996 after 21 years. I got the opportunity to work for the people. I devoted myself to the task of welfare of my countrymen not as a ruler but as a servant. My father got the opportunity to build the war-ravaged country for only three and a half years. And I got the chance to serve the people after 21 years.

During that time, the people of Bangladesh realised that the objective of a government is to accomplish the task of people's welfare. We signed the Chittagong Hill Tracts Peace Treaty ending the two-decade-long conflict. We brought back 62,000 refugees from India and rehabilitated them in the country. We signed the Ganges Water Sharing Treaty with India. The country's image brightened in the outside world.

Two steps back

A five-year period is too short for the development of any country. We couldn't win the election of 2001. The Bangladesh Nationalist Party-Jamaat-e-Islami assumed state power and destroyed all our achievements. Again, the country's progress suffered a setback. Militancy, terrorism, corruption and misrule made people's life miserable. The country became champions in the corruption index five times. The minority community became victims of torture. The country's socio-economic development had been stalled. The Awami League leaders and workers became targets of persecution. Bangladesh once again fell under emergency rule. We demanded

restoration of democracy. We faced jail, torture and false cases. But finally, people triumphed.

The national election was held after seven years in 2008. Winning the election, we formed the government. We started implementation of a Five Year Plan and 10-year-long Poverty Reduction Strategy Plan. We have been working to turn Bangladesh into a middle-income country by 2021 and a developed one by 2041. The people of Bangladesh started getting the benefit of it.

Bangladesh is marching ahead. We earned over 7.1% GDP growth. Inflation is contained within 5.28% and the poverty rate has been reduced to 22%. At this moment, on many socio-economic indicators, Bangladesh's standing is better than many other South Asian nations whereas a few years ago our position was at the bottom. But we still have a long way to go to ensure prosperity of the people. And we are working towards that end.

My objective is to fulfil the dream of Bangabandhu through building a hunger- and poverty-free Golden Bangladesh being imbued with the spirit of the War of Liberation.

Regional cooperation the key

I always refer to poverty as the main enemy of this region. A large number of people of Bangladesh and India suffer from malnutrition. They are deprived of their basic needs. Lack of nutrition is impeding the growth of a huge number of children. They don't have proper medicare and schooling. We have to change this scenario. We have the ability. The only thing we need is to change our mentality. I think eradication of poverty should be the first and foremost priority of our political leaders. And, in today's globalised world, it is difficult to do something in isolation. Rather, collaboration and cooperation can make many things

easier. That is why I always put emphasis on regional cooperation and improved connectivity.

I believe in peace. Only peaceful co-existence can ensure peace. There are some issues between us. But I believe that any problem can be resolved in a peaceful manner. We have demonstrated our willpower through the implementation of the Land Boundary Agreement. There are some more issues like sharing of waters of the common rivers (the Teesta issue is currently under discussion) that need to be resolved. I'm an optimistic person. I would like to rest my trust on the goodwill of the great people and the leaders of our neighbour. I know resources are scarce, but we can share those for the benefit of the people of both countries. We share the same culture and heritage. There are a lot of commonalities (at least with West Bengal). We share our Lalon, Rabindranath, Kazi Nazrul, Jibanananda; there is similarity in our language, we are nourished by the waters of the Padma, Brahmaputra, Teesta; and so on. The Sundarbans is our common pride. We don't have any strife over it. Then, why should there be any contention over the waters of common rivers?

Our foreign policy's core dictum is: 'Friendship to all, malice to none.' The Father of the Nation, Bangabandhu Sheikh Mujibur Rahman, defined the policy. We are also inspired from his words: "The very struggle of Bangladesh symbolised the universal struggle for peace and justice. It was, therefore, only natural that Bangladesh, from its very inception, should stand firmly by the side of the oppressed people of the world." At international forums, we support all international efforts towards building a just and peaceful world.

In recent years, especially after 2009, when my party assumed office, cooperation between Bangladesh and India has been bolstered manifold. Rail, road, and waterway connectivity boosted. Trade, commerce and investment maximised. People-to-people contact also got momentum. Such mutual cooperation is definitely

benefitting our people. Relations, at a personal or national level, largely depend on give-and-take measures. Mexican Nobel Laureate Octavio said 'Friendship is a river'. I think that the friendship between Bangladesh and India is like a flowing river and full with generosity. This is the spirit of the people of the two neighbours. I think if our commitments are honest, we would be able to achieve many things that are beneficial to our people. On the eve of my four-day visit to India, I myself, and on behalf of my countrymen, would like to convey the heartiest greetings to the people of India. I hope that the cooperative relations between Bangladesh and India would reach a new height through my visit.

Pakistan, India resume talks to bridge differences over Indus Waters Treaty

The Express Tribune, Pakistan, March 20, 2017

Federal Minister for Water and Power Khawaja Asif has urged Pakistan and India to respect the Indus Waters Treaty (IWT) as both the countries resume stalled talks on troubled waters today (Monday) in the capital under the 1960 treaty which will continue over the next two days. Delegations from Pakistan and India, led by their respective Indus waters commissioners are attending the 113th Permanent Indus Commission (PIC) meeting being held in Islamabad.

Delhi returns to the table after water war threats

A 10-member Indian delegation, led by India's Indus Water Commissioner P K Saxena, arrived on Sunday to take part in the meeting. Speaking to media on Monday, Asif said the "resumption of talks over the IWT was in the interest of Pakistan, India and the entire region." The agenda of this year's meeting includes deliberations on Pakal Dul, Lower Kalnai and Miyar hydroelectric plants designs, flood data supply by India and programme of tours of inspection and meetings by Pakistan and India to the sites of their interest in the Indus basin. The meeting between the two neighbouring countries is taking place after a lacuna of almost two years. The IWT makes it mandatory for the two countries to hold talks at least once a year. According to an official statement issued on Sunday, the last IWT meeting was held in May 2015. The long delay took place after Pakistan's Commissioner had announced a failure of talks during the 111th PIC meeting in 2015. Pakistan had raised objections over the designs of three projects on Chenab it considered being built by India in violation of the 1960 IWT.

Indian prime minister reviews Indus Waters Treaty

"We want India to share designs of the three projects [hydroelectric plants] with Pakistan because it is our right to raise objections to the projects if they are damaging our interests," he said while responding to a question. He further added that delays had been witnessed in the past in the handling of the Kishanganga project. "When we [Pakistan] went to the court of arbitration our position was not as strong as it could have been if we had approached the court in a timely manner." The minister added, however, that Pakistan has successfully defended its stand as per the IWT and, "Pakistan's position on the Ratle project is very strong." Asif also announced in the press conference that the Neelum-Jhelum project would become operational in March 2018.

While India offered to continue meetings at the commission level, Pakistan could not afford delays in the resolution process as the construction of the two plants were continuing, added the official statement.

After a bilateral meeting between the Secretary Water and Power with the Indian Secretary for Water Resources, held in New Delhi in July 2016, both the disputed matters were referred for a third party resolution through the World Bank (WB). Pakistan has been pursuing the matter of regular meetings of the Indus Water Commission with India to bring the other remaining issues under discussion. Despite various media statements causing speculations, Pakistan showed restraint and kept making efforts to resume commission level talks. According to the statement, the Government of Pakistan "appreciates the decision of the Indian government to resume regular talks and welcomes the Indian delegation to Islamabad."

India to lose if it breaches water treaty: minister

Pakistan, it added, believed that a continuation of the purposeful talks would lead to resolution of the matters at the commission level, in accordance with the provisions of the IWT, which had been a symbol of peaceful management of trans-boundary water resources. The statement added that Pakistan would continue its efforts to resolve the matters according to the provisions of the IWT and "expects that our goodwill will be reciprocated from the Indian side." Ahead of the meeting, an Indian official source told the Press Trust of India (PTI) that India is "always open" to discussing and resolving concerns Pakistan has over its projects under the IWT bilaterally but reiterated that there will be "no compromise" on India exploiting its due rights under the 57-year-old pact.

BIMSTEC a sunny prospect in BRICS summit at Goa

The Hindu, India, October 15, 2016

When leaders of countries that make up half the world's population and nearly a quarter of global GDP ($17 trillion combined) gather, it is a display of muscle that the world is bound to watch. Added to their economic clout, the leaders themselves are formidable strongmen, both regionally and globally: Prime Minister Modi, President Xi, President Putin, President Zuma and the new Brazilian President Temer who replaced strongwoman Dilma Rousseff.

Yet despite the power-packed photo opportunities at Goa this year, there are several reasons to believe that the BRICS forum, once comprising the world's fastest growing economies, is running out of steam. The slump in oil prices have negatively impacted both Russia and Brazil's growth stories, and Russia has paid heavily for western sanctions over Ukraine.

Chinese manufacturing saw its weakest growth in years, while India has faced a contraction in IIP figures even though it remains the world's fastest growing economy. The South African Finance Minister himself said his economy is in "crisis" this year, with revised growth estimates falling below 1 per cent, and 26 per cent unemployment, fuelling violent protests.

The other shift is political. Two years ago, when newly elected Prime Minister Narendra Modi took his first official visit outside of the neighbourhood to Fortaleza, Brazil, to attend the BRICS summit, he was yet to take his decisive shift toward the U.S. As a result, the BRICS joint statement included some bold paragraphs on counter-western views, on issues including Palestine, and the world economic order that are unlikely to find space in the Goa declaration.

Diplomatic divergence

Meanwhile bilateral ties between India and China have reached new lows: with China's CPEC clinch with Pakistan and India's shift to the U.S.' strategic corner on the South China Sea. Russia's shift away from an exclusive relationship with India, an ambivalence on defence ties with Pakistan consistent with its new dependence on China is another factor that is loosening some of the mortar between the BRICS countries. Brazil and South Africa are also known to have reservations on India's bid for the NSG membership, possibly prompted by China that has openly discouraged non-NPT members, which is a critical issue for India later this year when it tries to push through the bid again.

When it comes to the Goa declaration to be signed on Sunday, each of them has a particular agenda. The Modi government has made it clear that it wants to see "strong language" on terrorism, with specific references to cross-border terror, safe havens, funding and sponsorship of terror groups, that China may seek to temper on behalf of Pakistan. Russia would like the full backing of BRICS for its actions in Syria, which India and Brazil's new pro-U.S. government may resist. And China would like all BRICS countries to express support on the South China Sea, which India may find it difficult to do.

New initiative

Given all the stresses and strains on the structure of BRICS, the 'sunny' spot for India as a host may come from the BIMSTEC outreach instead. The seven-nation grouping of Bangladesh, Bhutan, India, Sri Lanka, Thailand, was founded in 1997 as BISTEC, and then refurbished as the Bay of Bengal initiative for Multi-sectoral technical and economic cooperation (BIMSTEC), but has floundered since then for lack of funding. It didn't even have an office, and meetings were held at the Thai foreign ministry in Bangkok until it was given headquarters in Dhaka in 2011 and a secretary general, Sri Lankan diplomat Sumith Nakandala, in 2014.

Much of BIMSTEC's success, say analysts, will depend on keeping the grouping away from politics that bedeviled SAARC. "India must not to fall in the trap of putting geopolitics over economics, reducing BIMSTEC into just another geopolitical weapon for isolating Pakistan. Rather, India should lead BIMSTEC positively with a much broader, inclusive vision driven by economic merits of cooperation," said Prof. Syed Munir Khasru, Chairman of Dhaka-based think tank, The Institute for Policy, Advocacy, and Governance (IPAG).

Growing connectivity

To that end, in the past few months, the grouping has shown a coherence and focus that is leading to new projects on connectivity, building infrastructure and sharing resources, both inter-regionally as well as bilaterally. India's "Act East" policy is spurring the government to extend the Trilateral highway project all the way to Cambodia, to help with port infrastructure in Bangladesh, Sri Lanka and Myanmar, while recently rescued ties with Nepal will see the government step up its hydel and road projects there.

In addition, the 'SASEC' grouping that also includes the Maldives, met last month to clear infrastructure projects funded by the Asian Development Bank, and the BBIN (Bangladesh, Bhutan, India, Nepal) and BCIM (Bangladesh, China, India, Myanmar) groupings are seeing their projects on seamless connectivity moving at a quicker pace.

As a result, when the BRICS leaders meeting at South Goa's Taj Exotica head over to the Leela resort for its retreat meetings with the BIMSTEC leadership including Prime Minister Sheikh Hasina, Aung San Suu Kyi, President Sirisena and others on Sunday, India will have concrete plans and projects to recommend for BRICS's New Development Bank to fund and the contingency reserve arrangement to propose. As the lynchpin between BRICS and BIMSTEC, India can also carve out a new leadership role that will

help the region, while tiding over the current tensions within its BRICS partnerships.

Goa Declaration at 8th BRICS Summit

October 16, 2016

1. We, the Leaders of the Federative Republic of Brazil, the Russian Federation, the Republic of India, the People's Republic of China and the Republic of South Africa, met on 15-16 October 2016 in Goa, India, at the Eighth BRICS Summit, which was held under the theme "Building Responsive, Inclusive and Collective Solutions."

2. Recalling all our previous declarations, we emphasise the importance of further strengthening BRICS solidarity and cooperation based on our common interests and key priorities to further strengthen our strategic partnership in the spirit ofopenness, solidarity,equality, mutual understanding, inclusiveness and mutually beneficial cooperation. We agree that emerging challenges to global peace and security and to sustainable development require further enhancing of our collective efforts.

3. We agree that BRICS countries represent an influential voice on the global stage through our tangible cooperation, which delivers direct benefits to our people. In this context, we note with satisfaction the operationalisation of the New Development Bank (NDB) and of the Contingent Reserve Arrangement (CRA), which contributes greatly to the global economy and the strengthening of the international financial architecture. We welcome the report presented by NDB President on the work of the Bank during the first year of its operations. We are pleased to note the progress in operationalising the Africa Regional Centre (ARC) of the NDB and pledge our full support in this regard. We look forward to developing new BRICS initiatives in a wider range of areas in the years to come.

4. We note with appreciation the approval of the first set of loans by the New Development Bank (NDB), particularly in the renewable energy projects in BRICS countries. We express satisfaction with NDB's issuance of the first set of green bonds in RMB. We are pleased to note that the operationalisation of BRICS Contingent Reserve Arrangements (CRA) has strengthened the global financial safety net.

5. In order to reach out and enrich our understanding and engagement with fellow developingand emerging economies, we will hold an OutreachSummit of BRICS Leaders with the Leaders of BIMSTEC member countries - Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation comprising of Bangladesh, Bhutan, India, Myanmar, Nepal, Sri Lanka and Thailand. The meeting will be an opportunity to renew our friendship with BIMSTEC countries as well as to jointly explore possibilities of expanding trade and commercial ties,and investment cooperation between BRICS and BIMSTEC countries,while advancing our common goals of peace, development, democracy and prosperity.

6. We reiterate our common vision of ongoing profound shifts in the world as it transitions to a more just, democratic, and multi-polar international order based on the central role of the United Nations, and respect for international law. We reaffirm the need for strengthening coordination of efforts on global issues and practical cooperation in the spirit of solidarity, mutual understanding and trust. We underline the importance of collective efforts in solving international problems, and for peaceful settlement of disputes through political and diplomatic means, and in this regard, we reiterate our commitment to the principles of the Charter of the United Nations.

7. We note the global character of current security challenges and threats confronting the international community. We reiterate our view that international efforts to address these challenges, the establishment ofsustainable peace as well as the transition to a more just, equitable and democratic multi-polar international order requires a comprehensive, concerted and determined approach, based on spirit of solidarity, mutual trust and benefit, equity and cooperation, strong commitment to international law and the central role of the United Nations as the universal multilateral organisation entrusted with the mandate for maintaining international peace and security, advance global development and to promote and protect human rights. We underline the importance of further strengthening coordination of our efforts in this context.

8. We reaffirm our commitment to contribute to safeguarding a fair and equitable international order based on the purposes and principles of the Charter of the United Nations including through consistent and universal respect and adherence to the principles and rules of international law in their inter-relation and integrity, compliance by all states with their international legal obligations.We express our commitment to resolutely reject the continued attempts to misrepresent the results of World War II. We recall further that development and security are closely interlinked, mutually reinforcing and key to attaining sustainable peace.

9. We remain confident that resolving international problems require collective efforts for peaceful settlement of disputes through political and diplomatic means. Implementation of principles of good-faith, sovereign equality of States, non-intervention in the internal affairs of States and cooperation excludes imposition of unilateral coercive measures not based on international law. We condemn unilateral military

interventions and economic sanctions in violation of international law and universally recognised norms of international relations. Bearing this in mind, we emphasise the unique importance of the indivisible nature of security, and that no State should strengthen its security at the expense of the security of others.

10. We recall the 2005 World Summit Outcome document. We reaffirm the need for a comprehensive reform of the UN, including its Security Council, with a view to making it more representative, effective and efficient, and to increase the representation of the developing countriesso that it can adequately respond to global challenges. China and Russia reiterate the importance they attach to the status and role of Brazil, India and South Africa in international affairs and support their aspiration to play a greater role in the UN.

11. We welcome the substantive measures undertaken by the UN membership to make the process of selecting and appointing the UN Secretary-General more transparent and inclusive.

12. We expressour gratitude to UN Secretary-General Mr. Ban Ki-moon for his contributions to the United Nations in the past ten years. We congratulate Mr. AntónioGuterres, on his appointment as the Secretary-General of the United Nations andexpress oursupport and to work closely with him.

13. Cognizant of BRICS countries' significant contributions to UN Peacekeeping operations, and recognising the important role of UN Peacekeeping operations in safeguarding international peace and security, we realise the challenges faced by UN Peacekeeping and emphasise the need to further strengthen its role, capacity, effectiveness, accountability and efficiency, while adhering to the basic principles of peacekeeping. We emphasise that UN Peacekeeping

operations should perform the duty of protection of civilians in strict accordance with their respective mandates and in respect of the primary responsibility of the host countries in this regard.

14. We are deeply concerned about the situation in the Middle East and North Africa. We support all effortsfor finding ways to the settlement of the crises in accordance with international law and in conformity with the principles of independence, territorial integrity and sovereignty of the countries of the region. On Syria, we call upon all parties involved to work for a comprehensive and peaceful resolution of the conflict taking into account the legitimate aspirations of the people of Syria,through inclusive national dialogue and a Syrian-led political process based on Geneva Communiqué of 30 June 2012 and in pursuance of the UN Security Council Resolution 2254 and 2268 for their full implementation.While continuing the relentless pursuit against terrorist groups so designated by the UN Security Councilincluding ISIL, Jabhat al-Nusra and other terrorist organisations designated by the UN Security Council.

15. We reiterate also the necessity to implement the two-state solution of the Palestinian-Israeli conflict on the basis of the relevant UNSC resolutions, the Madrid Principles and Arab Peace Initiative, and previous agreements between the two sides,through negotiations aimed at creating an independent, viable, territorially contiguous Palestinian State livingside-by-side in peace with Israel, withinsecure, mutually agreed and internationally recognised borders on the basis of 1967 lines, with East Jerusalem as its capital, as envisaged in the relevant UN Resolutions.

16. We express deep concern at the persisting security challenges in Afghanistan and significant increase in terrorist activities in Afghanistan. We affirm support to the efforts of the Afghan Government to achieve Afghan-led and Afghan-owned national reconciliation and combat terrorism, and readiness for constructive cooperation in order to facilitate security in Afghanistan, promote its independent political and economic course, becoming free from terrorism and drug trafficking. The Leaders expressed the view that capable and effective Afghan National Security Forces (ANSF) should be the key to the stabilisation of Afghanistan. In this regard, the Leaders emphasised the need for continued commitment of regional countries and wider international community, including the NATO-led Resolute Support Mission, which as the ISAF's heir has a key role in the ANSF capacity-building. The Leaders stressed the importance of multilateral region-led interaction on Afghan issues, primarily by those organisations, which consist of Afghanistan's neighbouring countries and other regional states, such as the Shanghai Cooperation Organisation, Collective Security Treaty Organization, and the Heart of Asia Conference.

17. We welcome the African Union's (AU) vision, aspirations, goals and priorities for Africa's development enshrined in Agenda 2063, which is complementary with the 2030 Agenda for Sustainable Development. We reaffirm our support for Africa's implementation of its variousprogrammesin pursuit of its continental agenda for peace and socio economic development. We will continue to engage in joint endeavours to advance Africa's solidarity, unity and strength through support measures for regional integration and sustainable development.We further welcome recent elections that have been held in the continent and the peaceful manner in which they were conducted.

18. We support the AU's efforts to resolving conflictsthrough its peace and security architecture, in collaboration with the United Nations and the continent's regional organisations, and to contribute towards lasting and sustainable peace and security in Africa.

19. We welcome the decision of the African Union's Assembly to operationalise its Peace Fund, in order to contribute to financing of its peace and security operations. We support efforts aimed at full operationalisation of the African Standby Force (ASF) and note the progress being made in this regard, including the contributions by the African Capacity for Immediate Responses to Crises (ACIRC).

20. We express our concern that political and security instability continues to loom in a number of countriesthat is exacerbated by terrorism and extremism.We call upon the international community through the United Nations, African Union and regional and international partners to continue their support in addressing these challenges, including post-conflict reconstruction and development efforts.

21. We welcome the adoption of landmark 2030 Agenda for Sustainable Development and its Sustainable Development Goals during the UN Summit on Sustainable Development on 25 September 2015 and the Addis Ababa Action Agenda at the Third International Conference on Financing for Development. We welcome the people-centred and holistic approach to sustainable development enshrined in the 2030 Agenda and its emphasis on equality, equity and quality-life to all. We welcome the reaffirmation of the guiding principles of the implementation of the 2030 Agenda, including the principle of Common But Differentiated Responsibilities (CBDR).

22. The 2030 Agenda, with its overarching focus on povertyeradication, lays an equal and balanced emphasis on the economic, social and environmental dimensions of sustainable development. We call upon developed countries to honour their Official Development Assistancecommitments to achieve 0.7% of Gross National Income commitment for Official Development Assistance to developing countries. Those commitments play a crucial role in the implementation of the SDGs. We further welcome the establishment of a Technology Facilitation Mechanism within the UN with a mandate to facilitate technology for the implementation of the SDGs.

23. We commit to lead by example in the implementation of the 2030 Agenda for Sustainable Development inline with national circumstances and development context respecting the national policy space. We welcome the G20 Action Plan on the 2030 Agenda for Sustainable Developmentadopted during G20 Hangzhou Summit and commit to its implementation by taking bold transformative steps through both collective and individual concreteactions.

24. We meet at a time when the global economic recovery is progressing, with improved resilience and emergence of new sources of growth.The growth, though is weaker than expected with downside risks to the global economy continuing to persist.This gets reflected in a variety of challenges including commodity price volatility, weak trade, high private and public indebtedness, inequality and lack of inclusiveness of economic growth. Meanwhile, the benefits from growth need to be sharedbroadly in an inclusive manner.Geopolitical conflicts, terrorism, refugee flows, illicit financial flows and the outcome of UK referendum have further added to the uncertainty in the global economy.

25. We reiterate our determination to use all policy tools – monetary, fiscal, and structural, individually and collectively, to achieve the goal of strong, sustainable, balanced and inclusive growth. Monetary policy will continue to support economic activity and ensure price stability, consistent with central bank's mandates. Monetary policy alone, though, cannot lead to balanced and sustainablegrowth. We, in this regard, underscore the essential role of structural reforms.We emphasise that our fiscal policies are equally important to support our common growth objectives. We also take note that the spill-over effects ofcertain policy measures in some systemically important advanced economies can have adverse impact on growth prospects of emerging economies.

26. We recognise that innovation is a key driver for mid and long term growth and sustainable development. We stress the importance of industrialisation and measures that promote industrial development as a core pillar of structural transformation.

27. We highlight the need to use tax policy and public expenditure in a more growth-friendly way taking into account fiscal space available, that promotesinclusiveness, maintains resilience and ensuressustainability of debt as a share of GDP.

28. We note the dynamic integration processes across the regions of the world, particularly in Asia, Africa and South America.We affirm our belief to promote growth in the context of regional integration on the basis of principles of equality, openness and inclusiveness. We further believe that this will promote economic expansion through enhanced trade,commercial and investmentlinkages.

29. We highlight the importance of public and private investments in infrastructure, including connectivity,to ensure sustained

long-term growth. We, in this regard, call for approaches to bridge the financing gap in infrastructure including through enhanced involvement of Multilateral Development Banks.

30. We reaffirm our commitment to a strong, quota based and adequately resourced IMF. Borrowed resources by the IMF should be on a temporary basis. We remain strongly committed to support the coordinated effort by the emerging economies to ensure that the Fifteenth General Review of Quotas, including the new quota formula, will be finalised within the agreed timelines so as to ensure that the increased voice of the dynamic emerging and developing economies reflects their relative contributions to the world economy, while protecting the voices of least developed countries (LDCs), poor countries and regions.

31. We welcome the inclusion of the RMB into the Special Drawing Rights (SDR) currency basket on 1October, 2016.

32. We call for the advanced European economies to meet their commitment to cede two chairs on the Executive Board of the IMF. The reform of the IMF should strengthen the voice and representation of the poorest members of the IMF, including Sub-Saharan Africa.

33. We share concerns regarding the challenges of sovereign debt restructurings, and note that timely and successful debt restructuring is key for ensuring access to international capital markets, and hence economic growth, for countries with high debt levels. We welcome the current discussions to improve the debt restructuring process,and on the revised collective action clauses (CACs).

34. We reiterate our support for the multilateral trading system and the centrality of the WTO as the cornerstone of a rule

based, open, transparent, non-discriminatory and inclusive multilateral trading system with development at the core ofits agenda. We note the increasing number ofbilateral, regional, and plurilateral trade agreements, and reiterate that these should be complementary to the multilateral trading system and encourage the parties thereon to align their work in consolidating the multilateral trading system under the WTO in accordance with the principles of transparency, inclusiveness, and compatibility with the WTO rules.

35. We emphasise the importance of implementing the decisions taken at the Bali and Nairobi Ministerial Conferences. We stress the need to advance negotiations on the remaining Doha Development Agenda (DDA) issues as a matter of priority. We call on all WTO members to work together to ensure a strong development oriented outcome for MC11 and beyond.

36. We appreciate the progress in the implementation of the Strategy for BRICS Economic Partnership and emphasise the importance of the BRICS Roadmap for Trade, Economic and Investment Cooperation until 2020. We believe that close cooperation between the sectoral cooperation mechanisms, BRICS Contact Group on Economic and Trade Issues, the BRICS Business Council, New Development Bank and the BRICS Interbank cooperation mechanism is crucial in strengthening the BRICS economic partnership. We welcome, in this context, the continued realisation of the major BRICS economic initiatives such as enhanced cooperation in e-commerce, "single window", IPR cooperation, trade promotionand micro, small and medium enterprises (MSMEs).We recognise non-tariff measures (NTMs),services sector, and standardisation and conformity assessments as possible areas of future cooperation.We note in this context

the meeting of BRICS Trade Ministers in New Delhi on 13 October 2016 and welcome its substantive outcomes.

37. In operationalising the Strategy for BRICS Economic Partnership, we encourage measures that support greater participation, value addition and upward mobility in Global Value Chains of our firms including through the preservation of policy space to promote industrial development.

38. We welcome India's initiative to host the first BRICS Trade Fair in New Delhi. This is an important step towards the implementation of Strategy for BRICS Economic Partnership. We believethis will further consolidate trade and commercial partnership among BRICS countries. We welcome the deliberations and outcome of the meeting of BRICS Trade Ministers held on 13October 2016 in New Delhi.

39. We noted the Annual Report by the BRICS Business Council, including the various initiatives undertaken by its Working Groups. We further direct the Council to accelerate the development and realisation of joint projects which, on a mutually beneficial basis, contribute to the economic objectives of BRICS.

40. We agreed that MSMEs provide major employment opportunities, at comparatively lower capital cost, and create self-employment opportunities in rural and underdeveloped areas. MSMEs thus help assure equitable wealth distribution nationally and globally. We commend organisation of BRICSsecond round-table on MSMEs by India with a focus on technical and business alliances in MSMEs Sector. We agree to work for greater integration of MSMEs in Regional and Global Value Chains.

41. We commend China for the successful hosting of the 11th G20 Leaders' Summit in Hangzhou and its focus on innovation, structural reform and development as drivers of medium and long term economic growth. We recognise the role of G20 as the premier forum for international and financial cooperation and emphasise the importance of the implementationof the outcomes of G20 Hangzhou Summit, that we believe will foster strong, sustainable, balanced and inclusive growth and will contribute to improved global economic governance and enhance the role of developing countries.

42. We stress the importance to foster an innovative, invigorated, interconnected and inclusive world economy.We will enhance our consultations and coordinationon the G20 agenda, especially on issues of mutual interest to the BRICS countries, and promote issues of importance for the Emerging Market and Developing Economies (EMDEs). We will continue to work closely with all G20 membersto strengthen macroeconomic cooperation, promote innovation, as well as robust and sustainable trade and investment to propel global growth,improve global economic governance,enhance the role of developing countries,strengthen international financial architecture,support for industrialisation in Africa and least developed countries and enhance cooperation on energy access and efficiency. We stress the need for enhanced international cooperation to address illicit cross-border financial flows, tax evasion and trade mis-invoicing.

43. The role of BRICS and its collaborative efforts in the field of economic and financial co-operation are yielding positive results. We emphasise the importance of our cooperation in order to help stabilise the global economy and to resume growth.

44. We welcome experts exploring the possibility of setting up an independent BRICS Rating Agency based on market-oriented principles, in order to further strengthen the global governance architecture.

45. We welcome the reports of BRICS Think Tanks Council and BRICS Academic Forum that have emerged as valuable platforms for our experts to exchange views. They have submitted their valuable suggestions with regard to promoting market research and analysis in BRICS and developing countries and exploring possibilities of carrying this process forward.We believe that BRICS institution-building is critical to our shared vision of transforming the global financial architecture to one based on the principles of fairness and equity.

46. We emphasise the importance of enhancing intra-BRICS cooperation in the industrial sector, including through the BRICS Industry Ministers Meetings, in order to contribute to the accelerated and sustainable economic growth, the strengthening of comprehensive industrial ties, the promotion of innovation as well as job creation, and improvement of the quality of life of people in BRICS countries.

47. We congratulate the United Nations Industrial Development Organization (UNIDO) for the 50th anniversary of its foundation and recall its unique mandate to promote and accelerate inclusive and sustainable industrial development and its contribution in promoting industrialisation in Africa. We note, in this context, the progress achieved so far in the establishment of the UNIDO-BRICS Technology Platform.

48. We commend our Customs administrations on the establishment of the Customs Cooperation Committee of BRICS,and on exploring means of further enhancing

collaboration in the future, including those aimed at creating legal basis for customs cooperation and facilitating procedures of customs control. We note the signing of the Regulations on Customs Cooperation Committee of the BRICS in line with the undertaking in the Strategy for BRICS Economic Partnership to strengthen interaction among Customs Administrations.

49. We recall the Fortaleza Declaration wherein we recognised the potential for BRICS insurance and reinsurance markets to pool capacities and had directed our relevant authorities to explore avenues for cooperation in this regard. We would like this work to be expedited.

50. We reaffirm our commitment towards a globally fair and modern tax systemand welcome the progress made on effective and widespread implementation of the internationally agreed standards. We support the implementation of the Base Erosion andProfit Shifting Project (BEPS) with due regard to the national realities of the countries.We encourage countries and International Organisations to assist developing economies in building their tax capacity.

51. We note that aggressive tax planning and tax practices hurt equitable development and economic growth. Base Erosion and Profit Shiftingmust be effectively tackled. We affirm that profit should be taxed in the jurisdiction where the economic activity is performedand the value is created. We reaffirm our commitment to support international cooperation in this regard, including in the Common Reporting Standard for Automatic Exchange of Tax Information (AEOI).

52. We note the ongoing discussions on international taxation matters. In this regard, we recall the Addis Ababa Action

Agenda on Financing for Development including its emphasis on inclusive cooperation and dialogue among national tax authorities on international tax matters with increased participation of developing countries and reflecting adequate, equitable, geographical distribution, representing different tax systems.

53. We support the strengthening of international cooperation against corruption, including through the BRICS Anti-Corruption Working Group, as well as on matters related to asset recovery and persons sought for corruption. We acknowledge that corruption includingillicit money and financial flows, and ill-gotten wealth stashed in foreign jurisdictions is a global challenge which mayimpact negatively on economic growth and sustainable development. We will strive to coordinate our approach in this regard and encourage a stronger global commitment to prevent and combat corruptionon the basis of the United Nations Convention against Corruption and other relevant international legal instruments.

54. We recognise that nuclear energy will play a significant role for some of the BRICS countries in meeting their 2015 Paris Climate Change Agreement commitments and for reducing global greenhouse gas emissions in the long term. In this regard, we underline the importance of predictability in accessing technology and finance for expansion of civil nuclear energy capacity which would contribute to the sustainable development of BRICS countries.

55. We reiterate that outer space shall be free for peaceful exploration and use by all States on the basis of equality in accordance with international law.Reaffirming that outer space shall remain free from any kind of weapons or any use

of force, we stress that negotiations for the conclusion of an international agreement or agreements to prevent an arms race in outer space are a priority task of the United Nations Conference on Disarmament, and support the efforts to start substantive work, inter alia, based on the updated draft treaty on the prevention of the placement of weapons in outer space and of the threat or use of force against outer space objects submitted by China and Russian Federation.We also note an international initiative for a political obligation onthe no first placement of weapons in outer space.

56. Priority should be accorded to ensuring the long-term sustainability of outer space activities, as well as ways and means of preserving outer space for future generations. We note that this is an important objective on the current agenda of the UN Committee on the Peaceful Uses of Outer Space (UNCOPUOS). In this respect, we welcome the recentdecision by the UNCOPUOS Scientific and Technical Sub-Committee Working Group on Long-term Sustainability of Outer Space Activities to conclude negotiations and achieve consensus on the full set of guidelines for the long term sustainability of outer space activities by 2018to coincide with the commemoration of the 50th Anniversary of the first United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE + 50).

57. We strongly condemn the recent several attacks, against some BRICS countries, including that in India.We strongly condemn terrorism in all its forms and manifestations and stressed that there can be no justification whatsoever for any acts of terrorism, whether based upon ideological, religious, political, racial, ethnic or any other reasons. We agreed to strengthen cooperation in combating international terrorism both at the bilateral level and at international fora.

58. To address the threat of chemical and biological terrorism, we support and emphasise the need for launching multilateral negotiations on an international convention for the suppression of acts of chemical and biological terrorism, including at the Conference on Disarmament.In this context, we welcome India's offer to host a Conference in 2018 aimed at strengthening international resolve in facing the challenge of the WMD-Terrorism nexus.

59. We call upon all nations to adopt a comprehensive approach in combating terrorism, which should include countering violent extremism as and when conducive to terrorism, radicalisation, recruitment, movement of terrorists including Foreign Terrorist Fighters, blocking sources of financing terrorism, including through organised crime by means of money-laundering, drug trafficking, criminal activities, dismantling terrorist bases, and countering misuse of the Internet including social media by terror entities through misuse of the latest Information and Communication Technologies (ICTs).Successfully combating terrorism requires a holistic approach. All counter-terrorism measures should uphold international law and respect human rights.

60. We acknowledge the recent meeting of the BRICS High Representatives on National Securityand, in this context, welcome the setting up and the first meeting of the BRICS Joint Working Group on Counter-Terrorism on 14September 2016 in New Delhi. We believe it will further promote dialogue and understanding among BRICS nations on issues of counter terrorism, as well ascoordinate efforts to address the scourge of terrorism.

61. We acknowledge that international terrorism, especially the Islamic State in Iraq and the Levant (ISIL, also known as

Daesh) and affiliated terrorist groups and individuals, constitute a global and unprecedented threat to international peace and security. Stressing UN's central role in coordinating multilateral approaches against terrorism, we urge all nations to undertake effective implementation of relevant UN Security Council Resolutions, and reaffirm our commitment on increasing the effectiveness of the UN counter terrorism framework.We call upon all nations to work together to expedite the adoption of the Comprehensive Convention on International Terrorism (CCIT) in the UN General Assembly without any further delay. We recall the responsibility of all States to prevent terrorist actions from their territories.

62. We reaffirm our commitment to the FATF International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation and call for swift, effective and universal implementation of FATF Consolidated Strategy on Combating Terrorist Financing, including effective implementation of its operational plan. We seek to intensify our cooperation in FATF and FATF-style regional bodies (FSRBs).

63. We welcome the outcome document of the Special session of the General Assembly on the world drug problem, held in New York from 19-21 April 2016. We call for strengthening of international and regional cooperation and coordination to counter the global threat caused by the illicit production and trafficking of drugs, especiallyopiates. We note with deep concern the increasing links between drug trafficking and terrorism, money laundering and organised crime. We commend the cooperation between BRICS drug control agencies and welcome the deliberations in second Anti-Drug Working Group Meeting held in New Delhi on 8 July 2016.

64. We reaffirm that ICT expansion is a key enabler for sustainable development, for international peace and security and for human rights. We agree to strengthen joint efforts to enhance security in the use of ICTs, combating the use of ICTs for criminal and terrorist purposes and improving cooperation between our technical, law enforcement, R&D and innovation in the field of ICTs and capacity building institutions. We affirm our commitment to bridging digital and technological divides, in particular between developed and developing countries. We recognise that our approach must be multidimensional and inclusive and contains an evolving understanding of what constitutes access, emphasising the quality of that access.

65. We reiterate that the use and development of ICTs through international and regional cooperation and on the basis of universally accepted norms and principles of international law, including the Charter of the UN; in particular political independence, territorial integrity and sovereign equality of States, the settlement of disputes by peaceful means, non-interference in internal affairs of other States as well as respect for human rights and fundamental freedoms, including the right to privacy; are of paramount importance in order to ensure a peaceful, secure and openand cooperative use of ICTs.

66. The increasing misuse of ICTs for terrorist purposes poses a threat to international peace and security. We emphasise the need to enhance international cooperation against terrorist and criminal misuse of ICTs and reaffirm the general approach laid in the eThekwini, Fortaleza and Ufa declarations in this regard. We reaffirm the key role of the UN in addressing the issues related to the security in the use of ICTs. We will continue to work together for the adoption of the rules, norms

and principles of responsible behaviour of Statesincludingthrough the process of UNGGE. We recognise that the states have the leading role to ensure stability and security in the use of ICTs.

67. We advocate also for an open, non-fragmented and secure Internet, and reaffirm that the Internet is a global resource and that States should participate on an equal footing in its evolution and functioning,taking into account the need to involve relevant stakeholders in their respective roles and responsibilities.

68. We recognise the importance of energy-saving and energy-efficiency for ensuring sustainable economic development and welcome the Memorandum of Understanding which was signed in this regard.

69. We recognise the challenge of scaling-up power generation and its efficient distribution, as well as the need to scale up low carbon fuels and other clean energy solutions. We further recognise the level of investments needed in renewable energy in this regard. We therefore believe that international cooperation in this field be focused on access to clean energy technology and finance. We further note the significance of clean energy in achieving Sustainable Development Goals. We recognise that sustainable development, energy access, and energy security are critical to the shared prosperity and future of the planet. We acknowledge that clean and renewable energy needs to be affordable to all.

70. We support a wider use of natural gas as an economically efficient and clean fuel to promote sustainable development as well as to reduce the greenhouse emissions in accordance with the Paris Agreement on climate change.

71. We note that BRICS countries face challenges of communicable diseases including HIV and Tuberculosis. We, in this regard, note the efforts made by BRICS Health Ministers to achieve the 90–90–90 HIV treatment target by 2020. We underline the imperative to advance cooperation and action on HIV and TB in the BRICS countries, including in the production of quality-assured drugs and diagnostics.

72. We take note of United Nations High Level Meeting on Ending AIDS in June 2016 and forthcoming Global Conference on TB under WHO auspices in Moscow in 2017.

73. Recognising global health challenges we emphasise the importance of cooperation among BRICS countries in promoting research and development of medicines and diagnostic tools to end epidemics and to facilitate access to safe, effective, quality and affordable essential medicines.

74. We agreed to organise a BRICS High Level Meeting on Traditional Medical Knowledge.

75. We welcome the High Level meeting on Anti-Microbial Resistance (AMR) during UNGA-71, which addresses the serious threat that AMR poses to public health, growth and global economic stability. We will seek to identify possibilities for cooperation among our health and/or regulatory authorities, with a view to share best practices and discuss challenges, as well as identifying potential areas for convergence.

76. We reaffirm our commitment to promote a long-term and balanced demographic development and continue cooperation on population related matters in accordance with the Agenda for BRICS Cooperation on Population Matters for 2015-2020.

77. We welcome the outcomes of the meetings of BRICS Labour & Employment Ministers held on 9 June 2016 in Geneva and on 27-28 September 2016 in New Delhi. We take note of the possibility of bilateral Social Security Agreements between BRICS countries, and of the commitment to take steps to establish a network of lead labour research and training institutes, so as to encourage capacity building, information exchange and sharing of best practices amongst BRICS countries. We recognise quality employment, including a Decent Work Agenda, sustaining social protection and enhancing rights at work, are core to inclusive and sustainable development.

78. We welcome the outcomes of the fourth BRICS Education Ministers' meeting held on 30 September 2016 in New Delhi, including the New Delhi Declaration on Education. We stress the importance of education and skills for economic development, and reaffirm the need for universal access to high-quality education. We are satisfied with the progress of the BRICS Network University (BRICSNU) as well as the BRICS University League (BRICSUL), which will commence their programmes in 2017. These two initiatives will facilitate higher education collaboration and partnerships across the BRICS countries.

79. We appreciate the organisation of Young Diplomats' Forum held on 3-6 September 2016 in Kolkata. We also welcome the signing of the Memorandum of Understanding between BRICS Diplomatic Academies to encourage exchange of knowledge and experiences.

80. We welcome the outcomes of the fourth BRICS STI Ministerial Meeting held on 8 October 2016, wherein they adopted theJaipur Declaration and endorsed the updated Work

Plan (2015-2018) aimed at strengthening cooperation in science, technology and innovation, especially leveraging young scientific talent for addressing societal challenges; creating a networking platform for BRICS young scientists; co-generating new knowledge and innovative products, services and processes; and addressing common global and regional socio-economic challenges utilising shared experiences and complementarities.

81. We stress the importance of implementation of the BRICS Research and Innovation Initiative. We welcome the hosting of the first BRICS Young Scientists Conclave in India, instituting of BRICS Innovative Idea Prize for Young Scientists.We note the progress of the first Call for Proposals under the BRICS STI Framework Programme, in ten thematic areas, with funding commitment from the five BRICS STI Ministries and associated funding bodies. We welcome the establishment of the BRICS Working Group on Research Infrastructure, and Mega-Science to reinforce the BRICS Global Research Advanced Infrastructure Network (BRICS-GRAIN).

82. We welcome the outcomes of the Agriculture Ministers' Meeting, held on 23 September 2016, including the Joint Declaration. We emphasise the importance of ensuring food security, and addressingmalnutrition, eliminating hunger,inequality and poverty through increased agricultural production, productivity, sustainable management of natural resources and trade in agriculture among the BRICS countries. As the world's leading producers of agriculture products and home to large populations, we emphasise the importance of BRICS cooperation in agriculture.We recognize the importance of science-based agriculture and of deploying information and communication technology (ICT).

83. To further intensify cooperation among BRICScountries in agricultural research policy, science and technology, innovation and capacity building, including technologies for small-holder farming in the BRICS countries, we welcome the signing of the MoU for Establishment of the BRICS Agricultural Research Platform.

84. Considering the dependence of agriculture on water, we call upon the development of infrastructure for irrigation to assist farmers in building resilience during times of drought and welcome sharing of experiences and expertise in these areas.

85. We affirm that the value of sharing expertise and experiences among BRICS countries with regard to usage of Information and Communication Technology (ICT) in e-governance, financial inclusion, and targeted delivery of benefits, e-commerce, open government, digital content and services and bridging the digital divide. We support efforts aimed at capacity building for effective participation in e-commerce trade to ensure shared benefits.

86. We welcome the forthcoming BRICS Telecommunication Ministerial Meeting that will further strengthen our cooperation, including on technology trends, standards developments, skill developments, and policy frameworks.

87. We believe it is necessary to ensure joint efforts towards diversification of the world market of software and IT equipment. We call for developing and strengthening the ICT cooperation in the framework of the BRICS Working Group on ICT Cooperation.

88. We welcome the outcomes of the meetings of BRICS Ministers responsible for Disaster Management held on 19-20 April 2016 in St. Petersburg and on 22 August 2016 in

Udaipur. We also welcome the Udaipur Declaration adopted at the second meeting and applaud the formation of BRICS Joint Task Force on Disaster Risk Management.

89. We extend our deepest condolences to the people of Haiti and the Caribbean on the tragic loss of lives following hurricane Matthew. We support the efforts of the UN and humanitarian partners in their response to this tragedy.

90. We welcome the outcomes of the BRICS Ministerial Meeting on Environment held on 15-16 September 2016, in Goa, including the Goa Statement on Environment. We welcome the decision to share technical expertise in the areas of abatement and control of air and water pollution, efficient management of waste and sustainable management of bio-diversity. We recognise the importance of participation by BRICS countries in environmental cooperation initiatives, including developing a platform for sharing environmentally sound technologies.

91. We welcome the outcome of the 17th Conference of Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), held in Johannesburg, South Africa, as a landmark advancement of the regulation of international trade in endangered species from 24 September - 4 October 2016.

92. We welcome the adoption of the Paris Agreement anchored in the United Nations Framework Convention on Climate Change (UNFCCC), and its signing by a large number of countries on 22 April 2016. We emphasise that the comprehensive, balanced and ambitious nature of the Paris Agreement reaffirms the principles of UNFCCC includingthe principle of equity and common but differentiated

responsibilities and respective capabilities, in light of different national circumstances (CBDR & RC).

93. We welcome the Paris Agreement and its imminent entry into force on 4 November 2016.We call on the developed countries to fulfil their responsibility towards providing the necessary financial resources, technology and capacity building assistance to support the developing countries with respect to both mitigation and adaptation for the implementation of the Paris Agreement.

94. We reiterate the commitments to gender equality and empowerment of all women and girls as contained in the 2030 Agenda. We recognise that women play a vital roleas agents of developmentand acknowledge that their equal and inclusive participation and contribution is crucial to making progress across all Sustainable Development Goals and targets. We emphasise the importance of enhancing accountability for the implementation of these commitments.

95. Cognizant of the potential and diversity of youth population in our countries, their needs and aspirations, we welcome the outcomes of the BRICS Youth Summit in Guwahati including, "Guwahati BRICS Youth Summit 2016 Call to Action" that recognise the importance of education, employment, entrepreneurship, and skills training for them to be socially and economically empowered.

96. We welcome the BRICS Convention on Tourism, that was organised in Khajuraho, Madhya Pradesh on 1-2 September 2016 as an effective means to promote tourism cooperation among BRICS countries.

97. As home to 43% of the world population and among the fastest urbanising societies, we recognise the multi-

dimensional challenges and opportunities of urbanisation. We affirm our engagement in the process that will lead to adoption of a New Urban Agenda by the Conference of the United Nations on Housing and Sustainable Urban Development – Habitat III(Quito, 17-20 October, 2016).We welcome the BRICS Urbanisation Forum, BRICS Friendship Cities Conclave, held in Visakhapatnam on 14-16 September 2016, and in Mumbai on 14-16 April 2016, respectively, which contributed to fostering increased engagements between our cities and stakeholders. We call for enhanced cooperation with regard to strengthening urban governance, making our cities safe and inclusive, improving urban transport, financing of urban infrastructure and building sustainable cities.

98. We note India's initiative on the upcoming BRICS Local Bodies Conference to exchange expertise and best-practices, including in local budgeting.

99. Noting the importance of orderly, safe, regular and responsible migration and mobility of people, we welcome the outcomes of first BRICS Migration Ministers Meeting in Sochi, Russian Federation, on 8 October 2015.

100. We recognise the important role of culture in sustainable development and in fostering mutual understanding and closer cooperation among our peoples. We encourage expansion of cultural exchanges between people of BRICS countries. In this context we commend the hosting of the first BRICS Film Festival in New Delhi on 2-6 September 2016.

101. We welcome the forthcoming meeting of the Second BRICS Parliamentary Forum in Geneva on 23 October 2016under the theme of 'BRICS Parliamentary Cooperation on the implementation of the SDGs'.

102. We appreciate the deliberations of the BRICS Women Parliamentarians' Forum in Jaipur on 20-21 August, 2016 and the adoption of Jaipur Declaration, centred on SDGs, that inter alia emphasises the commitment to strengthen parliamentary strategic partnerships on all the three dimensions of sustainable development,fostering gender equality and women empowerment.

103. We note the deliberations on a BRICS Railways Research Network aimed at promoting research and development in this field to further growth in our economies in a cost effective and sustainable manner.

104. We congratulate India on organising the first BRICS Under-17 Football Tournament in Goa on 5-15 October 2016. We,in this regard, note the initiative towards a BRICS Sports Council to foster exchanges among BRICS countries.

105. Recognising the increasing trade, business and investment between BRICS countries and the important role of BRICS Interbank Cooperation Mechanism, we welcome the signing of the Memorandum of Understanding between the BRICS countries National Development Banks and the New Development Bank (NDB). We welcome the initiative of the Export-Import Bank of India of instituting Annual BRICS Economic Research Award to promote advanced research in economics of relevance to BRICS countries.

106. We reiterate our commitment to strengthening our partnerships for common development. To this end, we endorse the Goa Action Plan.

107. China, South Africa, Brazil and Russia appreciate India's BRICS Chairpersonship and the good pace of BRICS cooperation agenda.

108. We emphasise the importance of review and follow up of implementation of outcome documents and decisions of the BRICS Summits. We task our Sherpas to carry this process forward.

109. China, South Africa, Brazil and Russia express their sincere gratitude to the Government and people of India for hosting the Eighth BRICS Summit in Goa.

110. India, South Africa, Brazil and Russia convey their appreciation to China for its offer to host the Ninth BRICS Summit in 2017 and extend full support to that end.

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Guidelines for Authors

The M. K. Nambyar SAARC Law Journal was launched originally as a flagship of the M K Nambyar SAARC LAW Centre in 2010. Over its short span of publication the fledgling periodical has grown into a full-fledged Journal with ISSN (No.2346-8646) accreditation and peer reviewed journal. The Journal has not only sustained its periodicity as a bi-annual publication, but over the years it has matured in quality and readership, and commits to enrich its scholarship from issue to issue in the years ahead. A notable feature of the Journal is that it stands out as the only publication focussed on the legal issues of concern and contemporary relevance to the SAARC region and its eight member countries though there are several other journals which debate a multitude of regional issues, political, economic, cultural, inter-state and other.

The Journal has adopted an inclusive approach by encouraging well researched articles from budding graduate and post-graduate law students of NALSAR with proven research aptitude and creativity. Scholarly contributions from other sources however are not excluded.

Contributors willing to submit article to the M K Nambyar SAARCLaw Journal should follow the prescribed guidelines. All contributors will be subjected to plagiarism test. Average score of plagiarism should not exceed 25% including footnotes/bibliography.

Length of the Article: 3500- 5000 words: font size: 12; Times New Roman; Space: 1.5

Abstract for the Article: The article should be accompanied by an abstract of 250 to 300 words which should be placed at the beginning of the paper.

Book Review: Book Reviews of some of the reputed Journal of SAARC Law are also invited. The minimum word limit of the content of Book Review should not be less than 1000 words. Full details of the book/Journal under review should also be furnished. Authors should apply the reference style furnished below.

All references should be footnotes at the bottom of each corresponding page of the text.

Book, single author:

Footnote: Catherine Delafield, Women's Diaries as Narrative in the Nineteenth-Century Novel (Burlington, VT: Ashgate, 2009), 145.

Book, two or three authors:

Footnote: Steven D. Levitt and Stephen J. Dubner, Superfreakonomics: Global Cooling, Patriotic Prostitutes, and Why Suicide Bombers Should Buy Life Insurance (New York: William Morrow, 2009), 35.

Book, more than three authors:

Footnote: Andrew Gelman and others, Red State, Blue State, Rich State, Poor State: Why Americans Vote the Way They Do (Princeton: Princeton University Press , 2008), 128-9.

Book chapter/work in an anthology:

Footnote: Christine De Vinne, "Religion under Revolution in Ourika," in, Approaches to Teaching Duras's Ourika, ed. Mary Ellen Birkett and Christopher Rivers (New York, NY: Modern Language Association of America, 2009), 41.

Case Reference:

Carew & Co. Ltd. V. Union of India, AIR 1975 SC 2260

Article from a journal:

Footnote: Tom Buchanan, "Between Marx and Coca-Cola: Youth Cultures in Changing European Societies, 1960-1980," Journal of Contemporary History, vol. 44, no. 2 (2009): 372.

Article from a magazine/periodical:

First Note: Jon Meacham, "The Stakes? Well, Armageddon, For One," Newsweek, October 12, 2009, 5.

Article from a newspaper:

First Note: Tyler Kepner, "A Battering of Santana Saves the Yankees ' Weekend," New York Times, June 15, 2009, Section D, Final edition.

Article from an encyclopaedia:

First Note: Encyclopedia Britannica, 11th. ed., s.v. "Gilbert Keith Chesterton."

Websites (not online journals):

First Note: University of Georgia, "Points of Pride," University of Georgia, http://www.uga.edu/profile/pride.html (accessed October 21, 2009).

Immediate Reference: where a source is quoted again immediately after the first quote: Ibid; p.26

Multiple References: where a particular reference (book, article or any other sources) is quoted more than once in the text: supra note 12, p.50

Maps, tables, figures should be mentioned at appropriate places in the Text. They should be sourced at the bottom. Not at the Footnote.

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