

**NALSAR University of Law, Hyderabad.**  
(Academic Year: 2016-2017)  
**Entrance exam for M.Phil. / Ph.D. programme**  
**October 15, 2016**

Marks: 50

Time: 2 hours and 30 minutes

**Instructions**

1. Read the questions carefully and answer.
2. No clarification shall be sought on the question paper.
3. Do not exceed the indicated word limit indicated.
4. The time limit mentioned is suggestive and not absolute.

**Q1. A. Read the text given and answer the questions that follow it. (5 marks; 10 minutes)**

Genetically modified (GM) crops that exterminate pests feeding on them are no longer uncommon. One of the latest is a strain of corn genetically engineered to disrupt the expression of certain genes in the corn rootworm - a pest that devastate this important crop. This is the first time that the technique known as RNA interference has proven effective through the ingestion of RNA rather than through its injection into pests. Compared to the insect-resistant transgenic plants that produce the *Bacillus thuringiensis* (Bt) toxin, the new strain of corn is much more specific in that it targets genes only found in a small number of species. As regards the risk to humans, the companies promoting the new crop make the dubious claim that there is no cause for concern since the RNA is broken down in the normal process of human digestion. At the very least, there is the concern about a repetition of the unpleasant allergic reactions caused by some earlier GM varieties. However, in the sphere of agriculture some experts are concerned that crops like this will show the same diminution in effectiveness observed with earlier Bt varieties. The chances of pests evolving to have a resistance to a toxin are greater when exposure occurs over a wider area for a longer period of time. By contrast, spraying with a pesticide only when absolutely necessary keeps the likelihood of toxin-resistant insects evolving down to a minimum. It would also be better for farmers to alternate pest management techniques instead of relying on one supposedly permanent solution. A further consideration is the diversity of the crop strains farmers plant. This suffers when powerful marketing campaigns persuade farmers to grow the same GM crop over huge areas.

1. According to the passage, RNA interference
  - i. can prove fatal for an organism.
  - ii. Only occurs in the corn rootworm.
  - iii. Requires the injection of a chemical agent.
  - iv. Is cause by the BT toxin.

2. Which of the following does not make it more likely for pest populations to develop a resistance to toxins?

- i. the occasional use of pesticide sprays
- ii. having the toxin permanently present in the crop
- iii. relying on a single pest management technique
- iv. using a pesticide over a wider area According to the passage, RNA interference

3. The toxin in the new strain of GM corn

- i. is known to be effective against a wide range of pests.
- ii. is also known as the Bt toxin.
- iii. has caused allergic reactions in some humans.
- iv. is not destroyed by corn rootworm digestion.

4. The passage implies that

- i. in some areas the new GM corn is now ineffective.
- ii. corn rootworm cannot develop a resistance to RNA interference.
- iii. very few farmers agreed to grow GM crops.
- iv. the Bt toxin affects a range of pests.

5. In the opinion of the author, the companies marketing the new corn

- i. may have made a misleading statement.
- ii. hold the key to solving the problem of hunger.
- iii. are ignorant of alternative pest management techniques.
- iv. have been unfairly targetted by anti-GM campaigners.

**B. Read the passage and answer the questions that follow. ( 5 marks; 10 minutes)**

A number of scientists are emphasizing the tremendous challenges that will soon be posed when the depletion of fossil fuel supplies coincides with an alarming increase in the global population. They highlight agriculture, which is heavily dependent not only on gasoline to fuel machinery but also on the petrochemicals without which today's synthetic fertilizers and pesticides could not be manufactured. But for the latter two, crop yields would be only a fraction of what they are. To assume that an abundant source of renewable energy will be a panacea is to ignore these vital non-fuel uses of petrochemicals.

Then there is the challenge posed to the current levels of mobility. As a fuel, gasoline has an unrivalled portability compared to electricity, which requires bulky batteries, and hydrogen, which is notoriously difficult to store. Biofuels might seem like an alternative but the energy (currently in the form of fossil fuels) consumed when converting corn into bioethanol, for instance, greatly exceeds the output when the fuel is utilized. In any case, once the crisis in the food supply looms large it will not make sense to divert food crops to other uses.

Although there seems to be a general acceptance that an era is coming to an end, there is a widespread complacency resting on the assumption that the experts will come up with a

technological remedy making for a completely pain-free transition. Scientists such as Walter Youngquist argue that this assumption may be mistaken and that the remaining resources might only support half of the current global population. In his opinion, the absence of a realistic alternative to fossil fuels will mean, amongst other things, that the first priority will be to curb the demand for food.

- A. What is the 'concern' of the author? (50 words ONLY)
- B. Why does the author predict thus: 'first priority will be to curb the demand for food'? (60 words ONLY)

**Q.2. Based on your reading of this extract, write an analytical appraisal of these arguments put forward by the Union Government. (Not more than 400 words, 15 marks).**

The following extract is from a judgment delivered by a two-judge bench of the Supreme Court of India (Madan B. Lokur, J. and Uday Umesh Lalit, J.) in a matter reported as *Extra Judicial Execution Victims' Families Association (EEVFAM) v. Union of India*, W.P. (Cri.) No. 129/2012. The judgment was pronounced on July 8, 2016. The petitioners had questioned the justifications for the imposition of the Armed Forces Special Powers Act (AFSPA) in the State of Manipur and had linked the continuation of this law with a large number of extrajudicial killings by the armed forces and paramilitary personnel in that State. In particular, the discussion was centered on Section 6 of this law which immunizes armed forces and paramilitary personnel from legal action in respect of cases where physical force has been used in good faith. In response, the Union Government defended the use of this law with some reasons that appear in Paragraphs 18, 19 and 20 of the judgment.

"18. It is submitted that though Manipur is facing an insurgency problem and the police and the armed forces are dealing with that problem to the best of their ability, the common man is not generally affected by the counter insurgency operations. It is stated that the people of Manipur have been actively participating in the electoral process and by way of example it is stated that in the 1990 elections for the assembly seats, the voting turnout was 89.95% and similarly in the 2012 elections for the assembly seats the voting percentage was 83.24%. It is submitted that the voting percentage in Manipur is amongst the highest in the country. (high voter turn-out)

19. It is emphasized that only 5000 militants are holding a population of about 23 lakhs in Manipur to ransom and keeping the people in constant fear. It is further stated that the root cause of militancy in Manipur is the constant endeavour of insurgent groups to extort money so that their leaders can lead a luxurious life in foreign countries. Additionally, ethnic rivalries, the tribal divide and factions in society and the unemployed youth are being exploited by militant outfits to fuel tension.
20. It is pointed out that the militant groups take advantage of a long international border of over 250 kms that is shared with Myanmar and that the border is heavily forested and has a very difficult terrain. The border area is inhabited by the same tribes on either side. These tribes have family relations and social interactions and therefore a free movement regime to move up to 16 kms on both sides is permitted. Taking advantage of this, the

*militant outfits utilize the other side of the border in conveniently conducting their operations of extortion, kidnapping, and killing, looting and ambushing the security forces."*

**Q.3. Write a concise note on any one of the following topics (not more than 250 words, 10 marks)**

Option 1: 'Fair use' of copyrighted material for educational purposes

Option 2: Ethical concerns arising from commercial surrogacy arrangements

Option 3: Regulatory challenges posed by the proliferation of Non-Banking Financial Companies (NBFCs) in India

Option 4: Should the offence of 'criminal defamation' be removed from the Indian Penal Code?

**Q4. Read the excerpt of the research paper given and attempt the questions that follow. (40 minutes; 15 marks)**

A. List researchers from any three fields who would be interested in reading this text. Predict why they would be interested in the text. (35 words ONLY each; 3 marks)

- 1.
- 2.
- 3.

B. Position yourself as one of the researchers you identified in [A] and justify your choice (50 words ONLY; 2 marks).

C. Identify the thematically relevant key points from the text and summarise in about 100 words only (10 marks).

# CHILD SEXUAL ABUSE AND THE STATE

## Applying Critical Outsider Methodologies to Legislative Policymaking

### INTRODUCTION

Sexual assaults are punished as serious felonies, often resulting in the lengthiest terms of incarceration meted out by the state.<sup>1</sup> When the perpetrator is an adult and the victim is a child,<sup>2</sup> many states further enhance the penalty for sexual assault by increasing the minimum available sentence<sup>3</sup> and creating more stringent conditions for release. However, one group of offenders regularly escapes the strict penal regime that states provide for the sexual assault of a child.<sup>4</sup> These are perpetrators of “intrafamilial child sexual abuse”;<sup>5</sup> that is, sexual offenders who are related to their child-victims by blood or affinity.

Child sexual abuse<sup>6</sup> remains, in the overwhelming majority of cases, a crime perpetrated by members of the child’s family and circle of trust.<sup>7</sup>

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<sup>1</sup> The penalty for rape in many states is equal to that imposed for a conviction of noncapital murder. Rape alone, (not combined with murder,) cannot be punished as a capital crime when the victim is an adult. See *Coker v. Georgia*, 433 U.S. 584, 592 (1977) (stating that death penalty for rape of adult victim constitutes cruel and unusual punishment and violates Eighth Amendment of U.S. Constitution).

<sup>2</sup> Although the age of majority in each state is 18 years or older, the threshold age for capacity to consent to sex in each state lies between 16 and 18 years.

<sup>3</sup> Examples of such enhancements can be found in the penal codes of Utah, Vermont, and Washington. UTAH CODE ANN. §§ 76-5-402.1, 402.3, 403.1 (2005); VT. STAT. ANN. tit. 13, § 3252 (2006); WASH. REV. CODE ANN. §§ 9A.44.073, .076, .079 (West 2006). The death penalty is available for child rape in Florida and Louisiana. FLA. STAT. § 794.011(2)(a) (2006) (sexual battery of victim under 12); LA. REV. STAT. ANN. § 14:42 (2006) (aggravated rape of victim under 12).

<sup>4</sup> In California, 18 is both the age of majority and the threshold age for sexual consent. However, the state specifies “under the age of 14” as the relevant victim age for many sex offenses against children. Therefore, in discussions of California law throughout this Article, the term “child” will denote a minor younger than 14 years of age.

<sup>5</sup> This Article focuses on sexual abuse of children by adults related by blood or affinity, which will be termed “intrafamilial child sexual abuse.” “Intrafamilial child sexual abuse” will be used in contrast to the more general “incest”, a term which includes sexual acts between related adults. See *infra* note 31 and accompanying text.

<sup>6</sup> While the study of child maltreatment also includes the topics of child neglect, emotional abuse, and physical abuse, this Article will focus on child sexual abuse in discussing the flaws of California’s penal code and their impact on child protection in the state.

<sup>7</sup> See U.S. DEP’T OF HEALTH AND HUMAN SERVS., CHILD MALTREATMENT 2003 (2005) (reporting that approximately 90,000 cases of child sexual abuse were

Legislators in many states have met this growing awareness with new laws<sup>8</sup> that increase the penalties for trusted adults<sup>9</sup> who sexually victimize children. But even in states that have taken such steps, older laws still connive at protecting intrafamilial child sexual offenders.

This continuing legislative loophole works in two ways. First, the laws of many states offer a discounted criminal charge to perpetrators related to their victims.<sup>10</sup> This results in prison sentences much shorter than those given to perpetrators who sexually assault unrelated children.<sup>11</sup> Further, some states, including California, allow perpetrators who are related to their victims to escape prison altogether.<sup>12</sup>

While not alone in containing such loopholes in its criminal code, California's regime is notable for the magnitude of the disparity involved. Unrelated perpetrators of child sexual assaults receive significant prison time and civil penalties; in contrast, given the exact same fact pattern, related

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substantiated in 2003); U.S. DEP'T OF HEALTH AND HUMAN SERVS., CHILD MALTREATMENT 2000 (2002) (reporting that approximately 87,000 cases of child sexual abuse were substantiated in 2000); U.S. DEP'T OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS (2000) (finding that 84% of all confirmed cases of child sexual abuse occur *in child's own home* and that 96% of all confirmed cases of child sexual abuse are perpetrated by adults related to the child or within the child's circle of trust).

<sup>8</sup> An example of the "position of trust" crime is provided by the penal code of Colorado. There, sexual assault of a child under 15 years of age is a Class 4 felony (two to six years imprisonment), whereas sexual assault of a child under 15 by a person in a position of trust is a Class 3 felony (four to twelve years imprisonment). See COLO. REV. STAT. §§ 18-3-405(1), 18-3-405.3(1), 18-1.3-401(V)(A) (2005). The "position of trust" offense, section 18-3-405.3, was added to Colorado's penal code in 1990. See 1990 Colo. Sess. Laws 1028; see also DEL. CODE ANN. tit. 11, § 773(a)(6) (2005) (stating that sexual assault of child under 16 by person in position of trust constitutes first-degree rape, which is Class A felony requiring prison sentence of 15 years to life).

<sup>9</sup> A "person in a position of trust" is defined by Colorado statute as:

any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child, including a guardian or someone otherwise responsible for the general supervision of a child's welfare, or a person who is charged with any duty or responsibility for the health, education, welfare, or supervision of a child, including foster care, child care, family care, or institutional care, either independently or through another, no matter how brief, at the time of an unlawful act.

COLO. REV. STAT. § 18-3-405(3.5) (2005).

<sup>10</sup> See *infra* notes 104-106 and accompanying text.

<sup>11</sup> See *infra* notes 104-106 and accompanying text.

<sup>12</sup> See *infra* notes 107-108 and accompanying text.

perpetrators regularly receive much lighter penalties. In addition, prosecutors can offer probation-only sentences and forms of judicial diversion that are exclusively available to perpetrators who can claim some familial relationship to their victims.<sup>13</sup>

This Article will examine the legal framework used in California to address child sexual abuse. Part I begins with a discussion of critical outsider jurisprudence and how OutCrit methodology<sup>14</sup> enhances an analysis of state child protective systems. Part II details the history of legal and political responses to child abuse and describes the growing social awareness of sexual abuse of children in their homes. Part III assesses the methods by which states punish child sexual offenders. Parts IV and V examines California law on sexual abuse of children and the variety of loopholes that exist to benefit intrafamilial sexual offenders. Finally, the Article details a legislative solution to correct the state laws that further endanger children who have already been victimized by adults in their own family.

### I. OUTCRIT SCHOLARSHIP: DEVELOPING A LEGAL PROBLEM-SOLVING METHODOLOGY

When proffering new regulations to address social problems, it is common for policymakers to discuss the impact of the proposed solution upon members of specific marginalized groups who will be targets of the legislation. However, policymakers often neglect to analyze, in terms of their impact upon these marginalized groups, the institutional processes contributing to the status quo.<sup>15</sup> That is, although the output of the policymaking process is offered up for scrutiny, the data gathering and analysis that informed the proposed

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<sup>13</sup> See Part IV *infra*.

<sup>14</sup> Francisco Valdes, *Outsider Jurisprudence, Critical Pedagogy and Social Justice Activism: Marking the Stirrings of Critical Legal Education*, 10 ASIAN L.J. 65, 66-67 (2003).

By "critical outsider jurisprudence" – or OutCrit theory – I mean the insights and interventions of multiple diverse scholars and activists that identify and align themselves, and their work, with outgroups in the United States and globally. The "OutCrit" denomination is an effort to conceptualize and operationalize the social justice analyses and struggles of varied and overlapping yet "different" subordinate groups in an interconnective way.

*Id.*

<sup>15</sup> For a thorough discussion of the utility of Critical Race Feminism in analyzing problems of interpersonal violence, see Adrien K. Wing, *A Critical Race Feminist Conceptualization of Violence: South African and Palestinian Women*, 60 ALB. L. REV. 943, 945-52 (1997).

solution may have been less vigorous and less neutral than policymakers believe.<sup>16</sup>

This initial failure to self-challenge contributes to the incivility of policy discussions. Relevant information held by stakeholders from marginalized groups comes to the attention of the policymakers too late to affect the analysis. This phenomenon has significant consequences because, in order to justify nontrivial changes in law, the policymakers must first recognize flaws in and assumptions about the effectiveness of the existing status quo. Stakeholders asked to comment too late in the process, for example, on an already-drafted proposal, become handicapped by the limits of the information used to derive the proposal. Their responses are restricted to the details of the proposal before them, unless they offer their unsolicited information at this point. But because such information comes so late in the process, and because it has not been examined using the policymakers' methodology, policymakers may discount its significance as being merely anecdotal. With their input undervalued, stakeholders' critiques are delegitimized. Further, because their input was not considered at the start of the process, their feedback, which stems from that same unevaluated input, is likely to be labeled irrelevant.

At the same time, the lack of principled analysis of the behaviors that underlie the existing situation practically guarantees that the policymakers' proposal for solution will be both incomplete and hard to justify.<sup>17</sup> As groups of stakeholders become more polarized, their counter-proposals for solution often become over-focused and address only parts of the overall problem. Such a policymaking "process" ends, not in coherent and implementable programs, but in horse-trading sessions, and the results have the same faint barnyard odor.

Legal scholars as a group are not known for their reticence in critiquing government institutions. Still, state child protective systems, comprising the constellation of prosecutors, courts, and child welfare agencies responsible for investigation and intervention in cases of child abuse and neglect, have never received the sustained scrutiny of the legal academy. And yet, few social problems have the wide-ranging impact on crime, the economy, and the health and welfare of communities that child abuse does. Successful interventionist projects in child protection, launched from within the academy, necessarily subvert the assumption that child abuse as a social problem remains too impenetrable or too arcane to be addressed by systemic pressure on the law's status quo.<sup>18</sup> Why, then, is the agenda of child protection still subject to

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<sup>16</sup> ANN SEIDMAN, ROBERT SEIDMAN & NALIN ABEYSEKERE, *ASSESSING LEGISLATION: A MANUAL FOR LEGISLATORS* 63-90 (2003).

<sup>17</sup> *Id.* at 17-25.

<sup>18</sup> See Richard Delgado, *The Imperial Scholar Revisited: How to Marginalize Outsider Writing, Ten Years Later*, 140 U. PA. L. REV. 1349, 1351-52 (1992) ("Reform tends to be slow and incremental; new knowledge strikes us as extreme, coercive, 'political,' or strange. Yet even if natural, this resistance proves self-



marginalization as a feminine pursuit?<sup>19</sup> Why are academics who assert the importance of child protection commonly subordinated within the legal academy,<sup>20</sup> as exemplified by the low value attached to both scholarly writing and clinical programs that address the issue?<sup>21</sup>

As OutCrit scholars have noted, intervention for social change lies far afield from the traditional doctrinal studies that so many consider the "proper" subjects for legal scholarship.<sup>22</sup> The majority preference for "professional distance" and "reasonable man" objectivity too easily denudes legal analyses of any relevance to the experiences of subordinated individuals.<sup>23</sup> Likewise, rejecting the tools of critical race and feminist legal theories impedes the development of more valid and therefore more robust solutions.<sup>24</sup> This bias against scholarly legal analysis of child protective laws has resulted in an uncharacteristic silence within the academy.<sup>25</sup> But more importantly, it has

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defeating, depriving us of points of view that we need for a more comprehensive view of the world.").

<sup>19</sup> See generally Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School,"* 38 J. LEGAL EDUC. 61 (1988).

<sup>20</sup> See generally Nancy Levit, *Keeping Feminism in Its Place: Sex Segregation and the Domestication of Female Academics,* 49 KAN. L. REV. 775 (2001).

<sup>21</sup> See, e.g., Delgado, *supra* note 18, at 1368-70 (describing rhetorical mechanisms of marginalization as attempt to postpone institutional change).

<sup>22</sup> See generally Anh T. Lam, *Culture as a Defense: Preventing Judicial Bias Against Asians and Pacific Islanders,* 1 ASIAN AM. PAC. ISLANDS L.J. 49, 53-57 (1993); Dana Raigrodski, *Breaking out of "Custody": A Feminist Voice in Constitutional Criminal Procedure,* 36 AM. CRIM. L. REV. 1301, 1318-26 (1999).

<sup>23</sup> See generally CYNTHIA LEE, *MURDER AND THE REASONABLE MAN: PASSION AND FEAR IN THE CRIMINAL COURTROOM* (2003) (discussing how the "reasonable man" doctrine in criminal law prejudices decisions against members of subordinated groups).

<sup>24</sup> See generally Amy H. Kastely, *Out of the Whiteness: On Raced Codes and White Race Consciousness in Some Tort, Criminal, and Contract Law,* 63 U. CIN. L. REV. 269 (1994) (employing critical race and feminist techniques in legal analysis).

<sup>25</sup> See Valdes, *supra* note 14, at 68-69.

In the context of the United States, uncritical mainstream education teaches each generation to genuflect and maintain the cultural, economic, and social skews constructed by the elites that dominate society and control its institutions of education. The principal aim (or effect) of such education has been, and still is, to assimilate and domesticate in the name of progress and prosperity, and even in the name of equality and liberty. This effect is achieved both by what is left out, as well as what is put into, the content or substance of "education." ... Under this view, mainstream education, in its dominant, uncritical form, formalizes and systematizes the inculcation of cultural politics to ratify the world "as is" ...

*Id.*

resulted in a failure to address governmental practices that actively harm the most vulnerable people in our society: children who have already been victimized at home.<sup>26</sup>

In analyzing the problems of California's approach to intrafamilial child sexual abuse, this Article utilizes the problem-solving methodology developed by Robert Seidman.<sup>27</sup> The methodology addresses the problems of traditional doctrinal analysis by inquiring beyond the behaviors of the targets of a given rule.<sup>28</sup> The Seidman analysis directs the researcher to identify the relevant implementing agency behaviors.<sup>29</sup> This information allows the researcher to examine the ways in which the agency's institutional processes affect the choices available to the targets.<sup>30</sup>

## II. HISTORY OF INCEST PROHIBITIONS

This Part will address the history of the prohibition on incest.<sup>31</sup> It will then examine the public's growing awareness during the last century of the problem of child sexual abuse and its impact on society.

Societies throughout human history have placed strictures on sexual relations between related adults.<sup>32</sup> The Code of Hammurabi<sup>33</sup> specified punishments ranging from exile<sup>34</sup> to death<sup>35</sup> for acts of incest.<sup>36</sup> In Greek

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<sup>26</sup> Francisco Valdes, *Outsider Scholars, Legal Theory & OutCrit Perspective: Postsubordination Vision as Jurisprudential Method*, 49 DEPAUL L. REV. 831, 836-37 (2000).

<sup>27</sup> See generally ANN SEIDMAN, ROBERT B. SEIDMAN & NYELE MBEKESEYERE, *LEGISLATIVE DRAFTING FOR DEMOCRATIC SOCIAL CHANGE* (2000).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 129-130.

<sup>30</sup> *Id.* at 131-139.

<sup>31</sup> "Incest" encompasses a variety of sexual contacts between persons related by blood or affinity, without regard to the age or capacity to consent of the persons involved. This Article concentrates on "intrafamilial child sexual abuse," which is sexual abuse of children by family members. The more general term "incest" will be used only to denote sexual behaviors between related adults, and to refer to laws penalizing the crime of "incest" in the various states. See *supra* note 5 and accompanying text.

<sup>32</sup> See generally Henry A. Kelly, *Kinship, Incest, and the Dictates of Law*, 14 AM. J. JURIS. 69 (1969).

<sup>33</sup> HAMMURABI, *THE CODE OF HAMMURABI: KING OF BABYLON 154-58* (Robert Harper trans., Univ. of Chi. Press 1904).

<sup>34</sup> *Id.* at 154. "If a man have known his daughter, they shall expel that man from the city."

<sup>35</sup> *Id.* at 157. "If a man lie in the bosom of his mother after the death of his father, they shall burn both of them."

**NALSAR**  
University of Law, Hyderabad.  
(Academic Year: 2017-2018)  
**ENTRANCE EXAM FOR PH.D. PROGRAMME**  
(August 12, 2017)

**Total Marks: 200**  
**Time: 2 Hours**

**INSTRUCTIONS:**

1. Read the questions carefully and answer.
2. No clarification shall be sought on the question paper.
3. Don't write any thing on the question paper. It will be treated as malpractice.
4. Do not exceed the word limit.

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**PART I**

**This part has to be attempted by all students**

- I. Read the extract. Answer the questions and complete the 'notes' below. (100 marks)**

**The Double-Edged Sword: Does Bio-mechanism Increase or Decrease Judges' Sentencing of Psychopaths?**

Lisa G. Aspinwall,<sup>1</sup>Teneille R. Brown,<sup>2</sup> James Tabery<sup>3\*</sup>

**Abstract**

We tested whether expert testimony concerning a bio-mechanism of psychopathy increases or decreases punishment. In a nationwide experiment, U.S. state trial judges (N = 181) read a hypothetical case (based on an actual case) where the convict was diagnosed with psychopathy. Evidence presented at sentencing in support of a biomechanical cause of the convict's psychopathy significantly reduced the extent to which psychopathy was rated as aggravating and significantly reduced sentencing (from 13.93 years to 12.83 years). Content analysis of judges' reasoning indicated that even though the majority of judges listed aggravating factors (86.7%), the biomechanical evidence increased the proportion of judges listing mitigating factors (from 29.7 to 47.8%). Our results contribute to the literature on how biological explanations of behavior figure into theories of culpability and punishment.

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1. Scientists have identified associations between genetic, neurobiological, and environmental factors and antisocial behaviors such as psychopathy [see, for example, (1–5)]. The inferences drawn from these associations are varied and controversial. But controversy has not prevented the research from making its way into court. Forensic psychiatrists reported testing defendants charged with first-degree murder for their genetic monoamine oxidase-A (MAOA) status (6), and an Italian judge considered a defendant's MAOA status when rendering his sentence (7). Neuroscientists performed functional magnetic resonance imaging on convicted murderer Brian Dugan to determine whether he has a defective, psychopathic brain, as ostensibly evidenced by neuroimaging (8).
2. Courts have repeatedly held that evidence relating to both future dangerousness and impaired volitional control is highly relevant to sentencing decisions (9, 10). Because of this, commentators have pointed out that evidence of a biomechanism associated with antisocial behaviors such as psychopathy may present a double-edged sword (11–18). And, indeed, some judges have considered such evidence mitigating (i.e., decreasing sentence), whereas other judges have considered the evidence aggravating (i.e., increasing sentence) (7, 19). Both sides of the double-edged sword rely in part on hard biological determinism, or the idea that once we know something about an individual's genes or brain, we can predict or explain his or her behavior (20). Thus, under a retributive or "just desserts" theory of punishment, evidence of a biomechanism may reduce judgments of culpability because it identifies an internal and stable cause of behavior believed to be outside the individual's control (21–23). At the same time, under a utilitarian theory that seeks to promote social welfare, the biomechanism may increase punishment, as the immutable characteristic suggests that he or she will likely reoffend. Such determinist perceptions of immutability may be especially pronounced for biomechanisms involving DNA-based evidence (24, 25). Past research has confirmed that judges are willing to hear and weigh evidence concerning genetic risk factors in criminal cases (26). However, the effect of biomechanical evidence on judges' reasoning in sentencing has yet to be experimentally tested.
3. Participants were 181 U.S. state trial court judges recruited by e-mail to complete an anonymous online survey concerning judicial use of scientific evidence at sentencing. All judges were presented with the same hypothetical vignette (~1200 words) loosely based upon the actual case of *Mobley v. State* (27), which involved a convicted murderer who famously sought to be genetically tested for his MAOA status as part of his defense. In our vignette, Jonathan

Donahue attempted to rob a restaurant. When the manager did not give Donahue the money, Donahue struck him repeatedly in the head with a gun, resulting in moderate, permanent brain damage. A jury found Donahue guilty of aggravated battery (see supplementary materials for recruitment procedure, judges' demographic information, a discussion of potential selection bias, and experimental vignette).

4. Participants were randomly assigned to one cell of a 2 "presenting party" (prosecution/defense) × 2 "biomechanism" (absent/present) design. All participants were provided identical expert testimony from a psychiatrist explaining that Donahue was a diagnosed psychopath. Participants in the biomechanism-absent condition received only expert testimony concerning the diagnosis of psychopathy. Participants in the biomechanism-present condition received identical expert testimony concerning the diagnosis of psychopathy plus expert testimony from a neurobiologist who presented an explanation of the biomechanism contributing to the development of psychopathy (here, low MAOA activity, atypical amygdala function, and other neurodevelopmental factors) (28). In the prosecution condition, prosecutors argued that the evidence should be considered aggravating because the crime and Donahue's actions afterward all pointed to his being a psychopath and posing a continued threat to society. In the defense condition, the defense counsel argued that the evidence should be considered mitigating because the crime and his actions afterward all pointed to Donahue's having a harder time controlling his impulses due to his disorder (see supplementary materials for complete text of expert testimony).
5. After exposure to the full case, including all expert testimony, judges were asked to indicate the extent to which the evidence concerning psychopathy mitigated, aggravated, or had no effect on the punishment they would render to Donahue; to rate his legal responsibility, moral responsibility, and free will; to estimate their personal average sentence for aggravated battery; and finally, to provide their sentence in years for the present case. Following each question, judges were asked to explain their answers using an open-ended text box.
6. These uncommon qualitative data illustrate that the introduction of expert testimony concerning a biomechanism for psychopathy significantly increased the number of judges invoking mitigating factors in their reasoning and balancing them with aggravating factors. These findings suggest that the biomechanism

did invoke such concepts as reduced culpability due to lack of impulse control, even if these concepts did not affect the ratings of free will and responsibility. In an actual case, judges may acknowledge (but not necessarily endorse) the potential for evidence to be seen as mitigating to document their consideration of this evidence in the event of an appeal. However, the demand to do so here in this hypothetical case should have been minimized, and the increased mention of mitigating factors is consistent with the results obtained for reduced ratings of aggravation and reduced sentence. The fact that the increased mention of mitigating factors occurred in conjunction with increased mentions of balancing and /or weighing the aggravating and mitigating factors conveys the genuine double-edged nature of the evidence of a biomechanism. The qualitative data concerning balancing and weighing countervailing factors illustrate how judges may acknowledge a punishment theory, such as retributivism, and find reduced impulse control to be a valid mitigating factor, while simultaneously recognizing the need to weigh different policy goals (e.g., public safety) along the lines of a more utilitarian theory of incapacitation.

Answer the following. **Adhere to the word limit mentioned with each question.**

1. Who would be interested in reading this research paper? (mention atleast 3 researchers from three different knowledge domains and their *likely* focus of investigation) (150 words each; 3X10= 30 marks)
2. Why do the authors call 'bio-mechanism' a double edged sword? (150 words; 10 marks)
3. Explain in not more than 150 words what the following refer to in the research paper and why the researchers used them.
  - a. 'uncommon qualitative data' (para 6; 150 words; 10 marks)
  - b. 'deterministic perception of immutability' (para 2; 150 words; 10 marks)
4. Complete the notes below based on the extract ( no word limit; 4x10=40 marks)
  - a. Theories on which this study builds its argument:
  - b. Need for the study and the research question(s):
  - c. Design of the study:
  - d. Participants; how many and mode of recruitment:
  - e. Tools used:
  - f. What did the participants do?
  - g. What is the data?
  - h. How was the data analyzed?
  - i. Conclusion:

- j. Are you 'buying' the reasoning and the conclusion? Why? Why not?

## PART II

Attempt any one question according to your disciplinary preference. Use a different answer script to answer this part.

### LAW

If you are a legal researcher, write an essay on a recent and significant *Indian judgment, legislative development or scholastic exposition* that has a major relevance to your work. Make sure your essay has the following.

- a. Your specific research issue and the need for your research in synchrony with the theoretical/philosophical issues of the domain.
- b. Explicate the specificities of the *judgment/legislative development/scholastic exposition* and its relevance for your research.
- c. Synchronize your specific research issue/problem **and** the need for your research with the specificities of the *development/exposition*. Predict how this perspective will address/shed light on the issues you are investigating.  
(600 to 750 words 100 marks)

### MANAGEMENT

If you are a management researcher, write an essay on a significant development in the financial/administrative domains that has a major impact/relevance for your work. Make sure your essay has the following-

- a. Your specific research issue and the need for your research in synchrony with the theoretical/philosophical issues of the domain.
- b. Explicate the specificities of the financial/administrative development and the relevance of the 'perspective' for your research
- c. Synchronize your specific research issue/problem **and** the need for your research with the specificities of the financial/administrative development. Predict how this perspective will address/shed light on the issues you are investigating.

{Note: we do not expect a question and answer style response here. We expect you to blend the cues above in your essay} (600 to 750 words 100 marks)

### **HUMANITIES/ SOCIAL SCIENCES**

If you are a Humanities/Social Science researcher, write an essay on a *significant theoretical or a methodological perspective* that has a major relevance for your work. Make sure your essay has the following-

- a. Your specific research issue and the need for your research in synchrony with the theoretical/philosophical issues of the domain in general.
- b. Explicate the specificities of the *significant theoretical/ methodological perspectives* and the relevance of the 'perspectives' for your research.
- c. Synchronize your specific research issue/problem **and** the need for your research with the specificities of the theoretical/ methodological perspective. Predict how this 'perspective' will shed light on the issues you are investigating.

{Note: we do not expect a question and answer style response here. We expect you to blend the cues above in your essay} (600 to 750 words; 100 marks)

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NALSAR, University of Law

Justice City, Shameerpet

PhD Entrance Exam

Part 1

Research Aptitude and writing skill

Marks: 50 marks

Time: 2 hours

No of questions: 2

- I. Read the brief executive summary and then answer the questions and complete the notes. (30 marks; Text pages 7 and Appendices)

**Article:** Executive summary of 'INTERNATIONAL HEARING on the Harm Done in Schools by the Suppression of the Mother Tongue: Findings and Recommendations

1. Mention at least 3 domains of knowledge that would be interested in this hearing and their likely focus. Why? (3x4=12m)
  2. Complete the notes below
    - a. Participants (Who? How many? Why were they the participants?) (3m)
    - b. Tools used to collect data (3m)
    - c. What was the data? (3m)
    - d. How was the data analyzed? (3m)
    - e. What did the study conclude? (3m)
    - f. Are you 'buying' the conclusion? Why? Why not? (3m)
- II. Write in not more than 80-100 words on each of the following pertaining to your specific research interest. Use the same headings (20 marks)
1. Your specific research question (3m)
  2. The need for your study (3m)
  3. Theoretical/philosophical stance pertaining to your study (3m)
  4. One relevant case study/judgment (3m)
  5. Design of the study (plan of the study) (3m)
  6. Relevant methodology (how will the study proceed?) (3m)
  7. Contribution of your study to the domain (2m)



# INTERNATIONAL HEARING on the Harm Done in Schools by the Suppression of the Mother Tongue

organized by Ledikasyon pu Travayer  
Port Louis, Mauritius, 20-24 October 2009

## Executive Summary of **Findings** & Recommendations

*"You didn't fail in school. The school failed you."*

### Preamble

Mauritius is in an exceptionally favourable position when compared with virtually all other postcolonial countries. Nearly all its citizens speak one language, namely Kreol. Yet this resource for national unity and development is systematically marginalised in education. Failure to do so results in the education system failing large numbers of Mauritian children. Prejudice and ignorance about the language are widespread.

A second major Mauritian advantage is that its teachers, like most of its citizens, are bilingual, if not multilingual. Yet the education system mainly concentrates on using one language, English, as the main medium for instruction and learning. This counteracts achievement of the goal of preparing schoolchildren to function multilingually both nationally and internationally.

*Ledikasyon pu Travayer* was convinced of the need for a public Hearing. It took the form of eliciting testimony from a wide range of witnesses. The task of the International Panel (see Appendix A for their qualifications and experience) was to analyse Mauritian language and education experience, and specifically the harm resulting from the neglect of the mother tongue in the school, and to make recommendations.

### The Mauritian linguistic, educational and social context

The Former President, Cassam Uteem, when officially opening the International Hearing, speaking in Kreol, referred to education in Mauritius as elitist, and to the suppression of the mother tongue in school. This causes harm to children, and therefore to future adults and to society as a whole. It aggravates and perpetuates poverty.

Schooling is compulsory from 5 to 16 years of age.

Official census data of 2000 shows that 70% of Mauritians declare that they speak Kreol at home, that 12% speak Bhojpuri, and that smaller numbers use a combination of other languages, including 5% who speak both Bhojpuri and Kreol.

The educational regulations decree a primary focus on the use and learning of English and secondarily French, while ancestral languages are studied as optional subjects. In the first three years, other languages, for instance Kreol, can be drawn upon.

Language learning occupies a big part of the school curriculum in Mauritius because there are many languages to be learned. This represents a formidable challenge to young learners right from the start because most of these languages are generally not their mother tongues.

Learning a second or a foreign language and at the same time learning other subjects through a second or foreign language makes the life of the young Mauritian child almost unbearable. Part of the explanation for this complex situation lies in the language history of Mauritius, which has been one of the dominance of the masters' languages, the obliteration of the slaves' mother tongues and the emergence of a native language, Kreol. Long considered as a patois, Kreol is therefore supposedly not deemed to be a "proper" language for systemic use in education.

Among the Asian languages brought in after the abolition of slavery, Bhojpuri, the dominant mother tongue, was progressively overshadowed by the Indian languages, for instance Hindi, now officially promoted as ancestral languages.

Mauritian Kreol appears now to have established itself as the national language of Mauritius. The language statistics published in the draft Educational Reform Plan 2008-20 show that Mauritian Kreol (70%), Bhojpuri (12%) and combinations of Kreol and Bhojpuri with other languages (11%) are the mother tongues of more than 90 percent of the population. Therefore special attention should be focused on Kreol, on Mauritian Bhojpuri, which appears to be an endangered mother tongue, and on Mauritian Sign Language as a mother tongue.

There is an urgent need to revisit the issue of mother tongue in education, in line with universal language rights, as enshrined in International Conventions dealing with the right to education, access to education, the right not to be discriminated against in education on the basis of language, and the right to equal protection of the law, also in education. The United Nations' **Convention on the Rights of the Child** of 1989 (the "CRC"), one of the international human rights documents that Mauritius is a state party to, stipulates, among other things, the following: a basic right to education is set out in Article 28, paragraph 1, in which the States parties to the CRC recognize *the right of the child to education*. The paragraph also provides that with a view to achieving this right "progressively and on the basis of equal opportunity", States will take a range of steps, including, in subparagraph (e), *measures to encourage regular attendance at schools and the reduction of drop-out rates*. Article 29, subparagraph (a) stipulates that education shall be directed to the *development of the child's personality, talents and mental and physical abilities to their fullest potential*. Article 29, subparagraph (d) stipulates that education should be directed to the development of *respect for the child's parents, his or her own cultural identity, language and values*.

The voluminous submissions received from the witnesses (see Appendix B, List of witnesses) during the Hearing sessions tend to confirm the current status of mismatch between the status of the mother tongues in Mauritian society at large and their marginalization within the school.

### **Findings based on the testimony, written and spoken, submitted to the Hearing**

1. A large volume of written evidence was submitted to the International Hearing, including legislation pertinent to the prevailing educational system (see Appendix C. List of written depositions). 47 witnesses contributed testimony in person, and their oral testimony was in most cases buttressed and illustrated by documentary evidence. All members of the International Panel had ample opportunity to interrogate the witnesses. Five DVD films and one audio clip recording were also made available to International Panel. The Hearing considered the expert evidence of Professor Bickerton.
2. The International Panel gave due consideration to all the evidence produced. We paid particular attention to the testimony of primary school teachers, pupils/students and their parents. A pupil as young as six testified. We are satisfied that the evidence we heard was pertinent, authentic and reliable.
3. The evidence established beyond doubt the following:
  - a) the written language used as the medium of instruction in schools is English and the formal oral languages used are English and French as provided in the *Education Act*. Schooling is free and compulsory from 5 to 16 years of age. There is, though, evidence of significant absenteeism.
  - b) it is permissible to have recourse to Kreol in the initial years to facilitate understanding, but it is not allowed to use Kreol as the medium of instruction. Educational material in Kreol is not allowed and is therefore not available in schools.

4. The language policy adopted in primary education has dramatic consequences. The rate of failure after nine years of schooling is astoundingly high. Its continuance cannot be justified even though it can be explained by the unwillingness displayed so far by the relevant authorities and, ultimately, by the Government to muster sufficient political courage to address this national problem with alarming consequences. The functional literacy rate is also alarmingly low. At the core of the education system is a language policy that fails to develop children's full potential in terms of their cognitive, emotional, psychological and social growth.
5. The International Panel heard evidence that indicated conclusively that, alongside academic failure, there are a number of closely related problems that malign the whole system: high rates of absenteeism, high push-out rates (euphemistically known as "dropout rate"), and lack of interest and motivation as well as an absence of creativity. Further, there was no doubt from the evidence adduced that grievous emotional and psychological damage is inflicted upon the children with immediate distressing repercussions for whole families.
6. Our attention was also drawn to the Certificate of Primary Education (CPE) Examination Report 2004 submitted by the MES, in respect of the Science subject. It is therein mentioned that more than 25% of students could not be awarded any grade. It was also observed that they had poor language skills and could not communicate their knowledge in English. Today, five years later, the situation has not improved at all.
7. The sheer number of failures indicates the extent of the harm being done to children. An analysis of the evidence submitted demonstrates the nature of the harm and its extreme gravity. Indeed witnesses recurrently used the term "crime" to define both the language policy in force and its tragic consequences for the children.
8. As stated in the opening speech of Mr. Cassam Uteem, former President of the Republic, there is a direct link between the prevailing language policy, the non-acquisition of knowledge, and poverty. The evidence of several witnesses confirms this vicious chain of causes and effects, as was pinpointed by Mr. Cassam Uteem in his opening speech.
9. The International Panel is of the view that the testimony of the Ombudsperson for Children was both courageous and unimpeachable. Her testimony echoes perfectly what has already been observed by the United Nations Committee on the Rights of the Child when dealing with the plight of Mauritian children. The said UN Committee expressed in clear terms its concern "*that English as the official language of instruction is not supplemented by educational materials in Creole and recommended that the State Party (i.e. Mauritius) should develop a policy regarding the use of Creole in the Early Childhood Development (ECD) stage and at primary levels*".
10. The International Panel also deplores, just as the Ombudsperson for Children noted, that the Ministry of Education, Culture and Human Resources seems to ignore the urgent necessity of producing handbooks and educational materials in Kreol when there can be no doubt anymore that the need for these is urgent.
11. The International Panel heard evidence from a substantial number of teachers and from a trade union representing teachers, as well as worried parents. Their testimony indicates that many children are traumatised by their language and culture not serving as primary instruments for learning. A large section of the school population does not experience a favourable climate for learning. As a result, many children fail to benefit from schooling. Many are either mentally or physically absent. An equally shocking finding is that the teachers themselves are also in a false position. They are forced to work in an educationally unsound way, using English that is an inappropriate medium for the acquisition of basic literacy skills, a foreign language that is incomprehensible to the children. Teachers can be tempted to accept this situation as inevitable, since it is government policy, and to capitalise on it by augmenting a meagre teacher salary by delivering private instruction outside school hours. They apparently have an incentive to live with unsound pedagogy in school in order to augment their income outside it.

12. The case for using Kreol was strengthened when we assessed the testimony submitted by Prevok-BEC. The whole picture is not altogether bleak. There are real possibilities to improve the fate of Mauritian children. The Prevok-BEC representative explained most cogently why and how the use of the mother tongue – Kreol in most instances and Bhojpuri where required - is of paramount importance. They have implemented a language policy of using the mother tongue as the medium of instruction and the positive results that this produces are indisputable and were not disputed.

13. We need to remind all institutions and all persons concerned that Mauritius is a signatory to many human rights instruments that proclaim the rights of children, including the right to education and the right to non-discrimination (see Appendix D. International human rights documents considered, where we also cite some of them). As matters stand in the education system, there is overwhelming evidence that the suppression of the mother tongue is causing incalculable harm to Mauritian children. Indeed, the exclusion of Kreol as a language of instruction is more than sufficient proof that children who have Kreol as their mother tongue are being discriminated against and are being deprived of effective access to the kind of education they are lawfully entitled to under Mauritian law and under international law.

14. The Panel wishes to put on record its appreciation of the action taken by the government of Mauritius to recognize and promote the development of the Mauritian Sign Language and its introduction as the mother tongue of the Deaf Mauritian child at school.

15. The panel was also apprised of the issue of mother tongue in education in Rodrigues. The more homogeneous composition of its population and the political autonomy of the island should facilitate the adoption of the mother tongue in school.

Summing up, then, we have considered the legal basis of the right to education in international human rights law and the extent to which that right requires mother tongue medium education (Appendix D, International human rights documents considered). We have compared these to evidence produced by the witnesses, including the written documentation received (see Appendices B. List of witnesses, and C. List of written depositions). We have also consulted the massive international research evidence on language in education. Mauritius uses mainly English, or sometimes French, as the main medium of instruction with children whose mother tongue is not English, even if Kreol or Bhojpuri may be used orally. This is known as submersion education (see Appendix F, Definitions of key concepts used). We argue that various forms of submersion education *violate the right to education*.

This submersion education through the medium of a language, foreign to most of the children, *does not give children access to education*, because of the cognitive, pedagogical, psychological and sociological barriers that they create. Submersion education is inconsistent with the basic right to education, as set out in a range of international standards. While many of those international human rights standards do not explicitly require mother tongue medium education, their satisfaction nevertheless implies the use of mother tongue medium education.

The *prohibition of discrimination* and the requirement of *equal protection* of the law are cornerstones of international human rights law. From this perspective, mother tongue medium education is essential if equal treatment of Mauritian children in the education system is going to take place. The effective implementation of a range of international standards is also made difficult, and often impossible, by submersion education practices, while following these standards would be facilitated by mother tongue medium education.

The oral and written submissions confirm

- that a significant number of children fail to attend school;
- that despite following several years of schooling, a large number of students fail to achieve basic functional literacy in any language;
- that the educational failure adversely affects life chances, including employment prospects.

**Thus the present educational system in Mauritius often violates children's right to education. It often prevents access to education. It discriminates against children on the basis of language, and it does not grant children equal protection of the law. It can cause and often causes serious**

harm to children; this harm can have consequences for them during the rest of their lives. It also has negative implications for the country as a whole, in terms of lack of development and use of the full potential of its people in terms of cognitive, emotional and educational capabilities and creativity, and in terms of both democratic participation and economic development.

On the other hand, in comparison with many other countries, Mauritius is in a very good position to change, because there have been many positive experiments (e.g. the Playgroups, Prevok) and most teachers are bilingual or multilingual. Timely implementation of the right decisions can lead to Mauritius becoming a regional hub for linguistic and educational, research and development excellence in MLE, mother-tongue-based multilingual education. This should be a priority goal for the Education Strategic Plan 2008-2020.

### Which way forward?

Would it help to teach children through the medium of Kreol or Bhojpuri for the first 3-4 years, and then “exit” them to English-medium teaching (so called early-exit transitional programme, see Appendix F. Definitions of key concepts used)? Kathleen Heugh (2009) asks the question how long it takes to learn a foreign or second language for educational purposes, and, listing many sources, answers: “*From 1953 to the mid 1980s, most literacy/language education specialists thought that it would be possible to provide early literacy (learning to read) in MT and switch to L2/FL (reading to learn) by years 2 or 3. We now know from comprehensive studies in Scandinavia, Australia, Russian Federation, India, North America, and, especially in Africa that it takes 6 - 8 years to learn enough L2 to be able to learn through the L2.*” Kathleen Heugh also summarises the African experience on early-exit transitional models on the basis of many large-scale studies: “Early transition to the international language of wider communication/ILWC across Africa is accompanied by:

- Poor literacy in L1 & L2 (SACMEQ 11 2005; UIE-ADEA study 2006; HSRC studies in S Africa 2007)
- Poor numeracy/mathematics & science (HSRC 2005; 2007)
- High failure and drop-out rates (Obanya 1999; Bamgbose 2000)
- High costs/ wastage of expenditure (Alidou et al 2006).”

Heugh also states (2009: 97-98) that “*early transition from the MT to the educational second language in African settings does not facilitate the requisite competence in the second language. High-level linguistic competence is necessary for meaningful access to the curriculum and without this the student is unable to engage with educational materials and discourse. Education in the former colonial (second) language therefore, does not offer equity with MTM education and it cannot deliver quality education. The comprehensive ADEA-UIE stock-taking evaluation of mother-tongue and bilingual programmes across sub-Saharan Africa found no evidence that second language only or early transition to the second language programmes produce successful academic achievement for students (Alidou et al 2006). Several cross-national studies show disturbing signs of poor achievement in literacy, mathematics and science, in the second language, across the region (UNESCO 2000). SACMEQ II (Southern and Eastern Africa Consortium for Monitoring Education Quality) 2000-2002 shows that 44% of learners in 14 countries achieve minimal levels of literacy at grade 6 whereas only 14.6% achieve the desired level of literacy achievement (Mothibeli 2005).*” These studies suggest that current language models fail most students and that the early transition to second language medium contributes to failure and attrition” (Heugh 2009: 110). Thus, mother-tongue based multilingual education (MLE), lasting minimally 6-8 years, is needed instead.

**Mother –tongue-based multilingual education (MLE)** is education where the children’s mother tongues are officially used as the languages of instruction, initially in all subjects. Foreign languages are introduced as subjects, first orally, later also in writing. Some teaching can be done through the medium of these foreign languages, initially in subjects which are not intellectually or linguistically demanding (e.g. physical education, music, etc) and where the children can use the context to

understand the teaching. Children should NOT be taught through the medium of these foreign languages in intellectually or linguistically demanding subjects (e.g. history, science, mathematics) before they have studied these languages at least 6-7 years as subjects and before they have had at least 3-4 years of teaching through these languages in "easy" subjects. In this way, children go from the known (the mother tongue) to the unknown, from the "easy" more concrete subjects/ concepts/ knowledge, to more demanding subjects/ concepts/ knowledge. They can build all further knowledge on what they already know. They can use the common underlying proficiency for all languages. It is easier, for instance, to learn to read and write in a language that one knows; children need to learn reading only once, the realisation of the relationship between what one hears (or signs) and what one sees on a page, needs to come only once, and is then easily transferred to other languages. MLE is a secure way to ensuring that children learn 2-3-4 languages at a high level.

In some African and Asian countries, MLE includes four languages: the mother tongue, a provincial/state language, the national language, and an international language (which may be the official language of the state). The specific number of languages in MLE depends on the language situation and the language policy of the particular state. What is important is that the mother tongue is the initial language of instruction.

Research has shown conclusively that minoritised children (children whose mother tongues are not official languages in the countries where they live) whose early education is in the language of their home, tend to do better in all subjects, including the official (or international) language (for instance English) than children who are being taught through the medium of the official language, foreign to the child. The longer the mother tongue is the main medium of education, the better the results. The medium of education is the most important factor influencing these children's school achievement. It is even more important than their socioeconomic position. Thus MLE can function to promote social equality.

The use of the MT as medium has the advantage that the child knows the medium to a reasonable extent at school age. The MT can therefore serve as the foundation of acquiring new concepts, new knowledge and a bridge for learning of a second or foreign/official language and any number of languages.

Consequently, the MT as the first language of instruction strengthens the social, cultural, psychological, cognitive and affective variables in learning, thus building confidence in the children that leads to a strong motivation and a positive attitudes towards self and others. Ultimately this results in a better performance.

Conversely, research and controlled experiments have established that starting education in a second or foreign language (not known by the child), triggers negative effects of socio-cultural, psychological and cognitive variables. This erodes confidence, sap motivation and negatively affect attitudes, leading to failure or poor performance, resulting ultimately in repetition of classes and/or pushout.

Among many advantages of MLE education, children can become multilingual and multicultural. They are also multiliterate: they can read and write competently in the mother tongue, the national language and one or more international languages of wider communication such as English or French.

It has been shown that properly implemented MLE can even in the short term cost less than the present submersion system with teaching through the medium of a foreign language (e.g. Burkina Faso), or, if it requires new materials, revised teacher training and retraining, etc, the cost may initially be around 1-2% of the education budget. In the long term, MLE saves educational and societal costs because it to a large extent can eliminate the appalling human and economic wastage caused by submersion education.

UNESCO has, since 1953, emphatically declared that '*the use of the mother tongue in education from infancy and as far up the ladder of education as possible*' is crucial for development of the child. Recent UNESCO positions emphasize the need to preserve multilingualism and linguistic and cultural diversity by every member nation of the Union. The adoption and use of MLE policy constitutes an obvious way of maintaining multilingualism, or conserving linguistic and cultural diversity. UNESCO published in 2003 an Education Position Paper: "*Education in a multilingual world*". It replaces UNESCO's classic book, *The use of vernacular languages in education* (Paris, 1953). In its first principle, UNESCO supports mother tongue medium instruction "as a means of



improving educational quality by building upon the knowledge and experience of the learners and teachers". Mother tongue medium instruction "is essential for initial instruction and literacy" and should "be extended to as late a stage in education as possible". In Principle II, "*UNESCO supports bilingual and/or multilingual education at all levels of education as a means of promoting both social and gender equality and as a key element of linguistically diverse societies.*" Principle III (II), advocates the implementation of "the right to learn in the mother tongue" and the "full use of culturally appropriate teaching methods of communication and transmission of knowledge" and Principle III(III), advocates that education should raise "awareness of the positive value of cultural [and linguistic] diversity". All this necessitates mother-tongue-based multilingual education.

MLE is the educational language policy favoured and recommended by the African Union and the Bamako International Forum on Multilingualism. The adoption and implementation of MLE by any African state is necessary to comply with UNESCO and African Union (AU) policy positions on languages in general and language-in-education policy in particular.

### **The International Panel's Recommendations**

1. The Government should urgently define in explicit terms its national languages policy in the light of –
  - Conventions on language in education signed and ratified by Mauritius (see Appendix D).
  - Latest research evidence on the education of children who need to become high-level multilingual under various circumstances.
  - Findings of the International Hearing.
2. The Ministry of Education should enforce the use of mother tongues as languages of instruction, i.e. adopt mother-tongue-based multilingual education, MLE in schools, by
  - introducing relevant instructional models and assessment, teacher education programs, curricula, teaching/learning materials, and parental and public awareness campaigns;
  - adapting and extending the experience gained and materials produced by various NGOs in this area;
  - mobilising the resources of modern technology for this purpose.
3. As a member of the African Union, Mauritius should take appropriate measures to formulate a comprehensive language policy which provides a new status and corresponding functions to Mauritian mother tongues (including Mauritian Sign Language) as languages of instruction and development for multilingual education (which includes English and French). This is in conformity with the African Union's Language Action plan for Africa, Title III, article 7(e) (see Appendix F, Recent African documents).
4. The Mauritian national languages policy should be clearly set out in appropriate legislation urgently.
5. The state should consider establishing a National Languages coordinating Centre [as provided for in the African Language Plan of Action Title III (article (e))], charged with co-ordinating the implementation of language policy and proposing solutions to language-related and language-dependent problems (article f). The Centre should be provided with adequate resources to undertake language development activities of standardisation, revalorisation, instrumentalisation and intellectualisation of Mauritian languages to assume their new functions in education and national development.

**The findings and recommendations of the Panel should be communicated, among others, to The Minister of Education, the Ministry of Women's Rights, Family Welfare & Child Development, to the Ombudsperson for Children, the Truth & Justice Commission, and other relevant bodies, to ensure that the needs and rights of children are safeguarded with respect to the principles of equal opportunities for access to and success in basic education and lifelong learning.**

## Appendices

- A. Membership and qualifications of the International Panel
- B. List of witnesses
- C. List of written depositions
- D. International human rights documents considered
- E. Recent African documents
- F. Definitions of key concepts used
- G. Why MLE for Mauritius?
- H. "What's in the words!" Sample testimony from witnesses

### Appendix A. Membership and qualifications of the International Panel

**Jean-Claude Bibi** is a Barrister at Law and member of human rights association JUSTICE, writes in Mauritian Kreol and has worked on promoting the Kreol language. Author of *Law Keepers and Hypocrites* and *The Best Loser System: A Communal Perversion*. He was Minister of Justice and has been Mauritian Ambassador to Australia and Madagascar.

**Beban Sammy Chumbow** PhD Indiana(USA), is a Professor with specialization in Language Policy and Planning, particular in relation to mother-tongue education and national development. He has been Vice-Chancellor of three different Cameroon Universities. He is currently Vice President of the Cameroon Academy of Sciences. He is also Fellow of the New York Academy of Sciences. He is a member of the board of the African Languages Academy (ACALAN), which is the responsible for seeing to the implementation of the African Union's policies on language in education in member countries.

**Vidya Golam** has degrees from the University of London. He is Head of English at the Loreto College Quatre Bornes. He was Web-tutor for Educanet (the first virtual school in Mauritius) and chief coordinator for the English section. He has scripted and presented programmes for the Mauritius College of the Air (MCA). He regularly collaborated to the Culture section of *Le Militant* newspaper between 1976 and 1977. He has participated in various public debates on Kreol language and literature. His published creative works include *Kanser* and *Disab Dan Lizye* (plays), *Voltiz Tu* (a collection of poems), *Lonorab Yago* (a political satire) and *Honourable Yago* (an adaptation in English of *Lonorab Yago*).

**Vinesh Y. Hookoomsing** holds a PhD in Linguistics from Laval University, Québec, Canada. His areas of research and publication cover language, education and cultural studies in relation to Kreol and plural diaspora societies. Former Pro Vice-Chancellor for research, consultancy, and publications at the University of Mauritius, he headed the University's Language Institute project until he retired in May 2008. In 2004, he was entrusted by the Ministry of Education with the responsibility of producing a harmonized orthography – *Graf Larmoni* – for the Mauritian Kreol language. He chaired the Linguistics Association of SADC Universities (LASU) from 2004 to 2007. His current responsibilities include the management and development of the Mauritian Sign Language, a government of Mauritius project. Among his relevant publications are: *Dictionary of Mauritian Creole*, co-authored with Philip Baker, l'Harmattan, Paris, 1987; and *Multiple Identities in Action: Mauritius and some Antillean Parallelisms*.

**Medha Devi Moti** graduated in English Language and Literature at the University of St. Andrews and holds a Diploma in Education from the University of Oxford. She joined the Ministry of Education as a secondary school teacher and taught English for ten years after which she was posted at Ministry headquarters. She served for the next 25 years in various departments of the Ministry, notably the Pre- Primary Unit, the Inspectorate and Arts and Culture Division. After retiring, she has acted as consultant on assignments for Unicef, ADEA, UNDP and the Mauritius Institute of Education.

**Robert Phillipson** is British, with degrees from Cambridge and Leeds Universities, and a doctorate from the University of Amsterdam. He worked in Africa and Yugoslavia before moving to Denmark, where he is a professor at Copenhagen Business School. His books on language learning, language rights, and language policy have been published in ten countries. He is involved in evaluating the European Union's policies for multilingualism. He is best known for *Linguistic Imperialism* and *English-only Europe? Challenging language policy*.

**Tove Skutnabb-Kangas** has doctorates from Finland and Denmark. She has published widely (over 50 written or edited books, over 400 book chapters and scientific articles) in over 30 languages on language in education, multilingualism, and linguistic human rights. She is emerita from Roskilde University, Denmark, and associate professor at Åbo Akademi University, Vasa, Finland. She has done specialized work on the relationship between mother tongue education and academic results. She has advised the UN, UNESCO, the OSCE and many national bodies on educational language policy, language rights, linguistic diversity and multilingual education. One of her books is the 800-page book *Linguistic Genocide in Education or Worldwide Diversity and Human Rights*.

## Appendix B. List of witnesses

Jimmy Harmon, in charge of *Bureau Education Catholique* Pre-Vocational Programme in Mauritian Kreol.  
Henri Favory, theatre co-ordinator, former primary school teacher  
Vimala Lutchmee, pre-primary school educator  
Robert Furlong, researcher into printed material in Kreol  
Alain Munien, Director, Terre de Paix  
Arnaud Carpooran, lecturer University of Mauritius, Co-Ordinator, first-ever Kreol-Kreol Dictionary  
Dev Virahsawmy, linguist, writer  
Rada Kistnasamy (Ledikasyon pu Travayer), IT technician  
Rama Poonoosamy, Former Minister of Culture, publisher  
Mr. Gowtam Choychoo, retired police officer  
Patrick Ramdony, teacher and writer  
Suttyhudeo Tengur, President of Government Hindi Teachers' Union  
Samuel Lam, teacher in the BPS pre-vocational BEC school.  
Saresh Viramalay, pre-primary teacher  
Veda Munian, pre-primary teacher  
Jessinee Munian, primary school pupil, daughter of Veda Munian  
Gilbert Ducasse, teacher and union leader  
Ally Hosenbokus, Prevok teacher non BEC school  
Lindsay Dhokit, Lecturer at University of Mauritius.  
Pushpa Lallah (Playgroup), Pre-primary teacher trainer Suresh Ramsahok, parent, taxi driver.  
Lindley Couronne, Director of Amnesty International Mauritius Section  
Marie-Claude Jolicoeur, Primary school teacher in Rodrigues  
Shirin Aumeerudy, Ombudsperson for Children, Former Minister of Women's Rights & Minister of Justice.  
Gerard Lesage, social worker.  
Marie-Rose Lapiere, adult literacy pupil.  
Jocelyne L'Entete, adult literacy pupil.  
Jugdish Goburdun, Former Minister of Health, testifying on Bhojpuri  
Ricardo Louis, teacher, from Rodrigues  
Meeniama Rungapen, adult literacy pupil.  
Josian Zoile, Mauritian Sign Language (MSL)  
Pratima Lokhun, Mauritian Sign Language.  
Ram Seegobin, representative of LALIT.  
Sandana Vellien, teacher of Tamil and mother.  
Lindsay Aubeelack, adult literacy pupil.  
Mohunparsad Burton, retired teacher.  
Martine Mavisa, parent with her babe-in-arms.  
Crystal Lorena Moonsamy, primary school pupil, daughter of Martine Mavisa.  
Marcel Poinen, writer.  
Alain Romaine, Catholic Priest.  
Herve Hector, insurance company agent  
Shiva Tirvengadam, Primary School Teacher.  
Raj Runglall, who was teacher at Agaléga Outer Island and, previously to that, in purely Bhojpuriphone school.

**Audio submission from a witness:**  
Steve Obeegadoo, Former Education Minister (plus transcription/translation)

**Written submissions from witnesses:**  
Elsa Wiehe, researcher  
Shameem Oozeerally, university teacher  
Mala Toussaint, secondary school teacher.

**DVD clips of witnesses, submitted:**  
Alain Ah-Vee, individual testimony  
Madhu Gungadin, individual testimony  
Yannick Jeanne, individual testimony  
Ragini Kistnasamy, individual testimony  
Rajni Lallah, individual testimony

**Written reports formally submitted by organisms:**  
MES reports on CPE Exams 2005, 06, 07, 08 submitted by MES.  
National Human Rights Commission Reports 2006, 2007, 2008 submitted by the NHRC.

**Special Category of Witness (on DVD and in transcription and translation):**  
Prof. Derek Bickerton on DVD Film made specially for Hearing (also in booklet form with translation).

LPT case preparation team (Lindsey Collen, Madu Gungadin, Anne Marie Joly, Afeeka Joolfoo, Shabeela Kalla, Ragini Kistnasamy, Rajni Lallah)

## Appendix C. List of written depositions

Submitted by LPT Case Preparation Team

1. Constitution of Mauritius, 1968. Section 49, Official language of National Assembly.
  2. Education Act 1957, Section 34 Grant in Aid and Section 35 State supported schools open to all [Sections on Free Primary and Secondary schools].
  3. Paragraphs 6 and 7 of Privy Council Judgement 2004 in appeal Bishop of Roman Catholic Diocese of Port Louis & Ors v. Teneur & Ors (Mauritius) [2004] UKPC 9 (3 February 2004) confirms free Primary and Secondary education.
  4. *Education Act 1957*, Section 37, **Compulsory primary education**
  5. (1) Table D8 – Resident population by language usually spoken at home and sex. Official Government Census 2000 (carried out every 10 years), Central Statistics Office, Mauritius. [Ledikasyon Pu Travayer breakdown on number of people speaking different languages “usually at home” in Mauritius 2000.]  
(2) Table E1 – Residential population 12 years of age and over by geographical location, sex and languages read and written. Official Government Census 2000, Central Statistics Office, Mauritius. [Ledikasyon Pu Travayer highlights surprising number of people who only read and write Kreol and Bhojपुरi]
  6. *Education Ordinance 1957*, Section 43, “**Medium of instruction and teaching of languages**”.
  7. Page 8 on **Use of vernacular languages in Education**. Address by Hon. D. Gokhool, Minister of Education & Human Resources on the occasion of the opening of a 3-day colloquium in the context of the celebration of World Literacy Day, 8 September 2006 at BEC conference room, Rose Hill, Mauritius.
  8. Question B/823 **Kreol Language – Medium of Instruction**. Answer by Minister of Education, Culture & Human Resources. Mauritius Fourth National Assembly, Debate No. 22 of 2009. Sitting Tuesday 14 July 2009.
- PARLIAMENTARY QUESTIONS.
9. Submission by the National Human Rights Commission (NHRC), Ref. HRC/170 to *Hearing into the Harm Done to Children* of NHRC Annual Reports for the year 2006, 2007 and 2008. The Commission highlights paragraphs 37-39 of *NHRC Annual Report 2006*, Section “B. Kreol as a Medium of Instruction” in *NHRC Annual Report 2007* and paragraph 55 in *NHRC Annual Report 2008*.
  10. Paragraph 435 of the “Concluding Observations of the Committee on Economic, Social and Cultural Rights on the implementation of the Covenant in Mauritius” on Kreol and Bhojपुरi in the Mauritian education system. United Nations Economic and Social Council ECOSOC, Substantive session of 1995. E/1990/S/Add. 21. 14 October 1994.
  11. Set of all prescribed books for standards I, V and VI in primary schools. A second set of books used in private tuition for standards V and VI primary school students (*Paving the Way to Success: French, Standard VI*, D.V. Chetty, Starprint; *Paving the Way to Success: English, Standard VI*, D.V. Chetty, Starprint; *Paving the Way to Success: Science, Standard VI*, D.V. Chetty, Caslon); *Paving the Way to Success: History and Geography, Standard VI*, D.V. Chetty, Starprint. *Paving the Way to Success: Mathematics, Standard V*, D.V. Chetty, Starprint; *Paving the Way to Success: French, Standard V*, D.V. Chetty, Caslon; *Paving the Way to Success: English, Standard V*, D.V. Chetty, Caslon.)
  12. Section 2.2 of *Education & Human Resources Strategy Plan 2008-2020*. Ministry of Education, Culture and Human Resources, November 2008
  13. “Lack of necessary skills” as one of the main reasons for recruitment difficulties. Public Report on the *ICT-BPO Sector Salary Survey Highlights*, page 16, OTAM-CCIFM, Mauritius 2008.
  14. *Graft-larmoni*. A harmonized writing system for the Mauritian Creole Language, Professor Vinesh Y Hookoomsing, University of Mauritius, September 2004.
  15. Survey on perception of people on the use of Mother Tongues in various State institutions in Mauritius, including in schools, as well as degree of awareness of people about the existence of language support (like dictionaries, use in Pre-Vocational, systematized orthography) and analysis of results. Sofres (Maurice) Ltée. March 2009.
  16. Existing Dictionaries, as a guide to instrumentalization of Kreol and Bhojपुरi:
    - (1) Baker, Philip. *Kreol. Description of Mauritian Creole*. UK. 1972.
    - (2) Ledikasyon Pu Travayer. *Diksyoner Kreol Angle*. Prototip. LPT. First Edition 1984.
    - (3) Hookoomsing, Y. Vinesh and Baker, Philip. *Morisyen-English-Francais: Diksyoner Kreol Morisyen*. Harmattan. 1987.
    - (3) Sewtohul, K. Goswami. *Diksyoner Kreol Bhojपुरi*. LPT. October 1990.
    - (4) Carpooran, Arnaud. *Diksyoner morisien*. Prototip pou enn pemie diksyoner kreol monoleng. Bartoldi. 2005.
    - (5) Carpooran, Arnaud. *Diksyoner morisien*. Premie ototip pou enn pemie diksyoner kreol monoleng dan Lemond & Ekivalan lexical an franse ek angle. Koleksion Text Kreol. 2009.

### Other written submissions from witnesses present

Jugdish Goburdhun:

World Bhojपुरi Hamaar Maa , Indian Diaspora Centre August 2009  
Bhojपुरi Ke Heera-Moote (Diamond & Pearl of Mauritian Bhojपुरi)

**ABAIM:**

Tizan ar so 8 Frer (ABAIM,2003)  
 16 Ti Morso Nu Lanfans (ABAIM,2002)  
 Rekreasyon, 31 ti parfin nou memwar, ABAIM, 2009

**Arnaud Carpooran**

1. MA dissertation sur "Identite et langue en milieu scolaire confessionnel catholique (garçons) a Maurice: une etude sur l'utilisation de marqueurs linguistiques dans une problematique identitaire liee a l'integration en milieu scolaire", Universite de la Reunion, 1992.  
 2. PhD thesis "Langue(s) et droits(s) en milieu plurilingue: le cas de l'Ile Maurice", 1996-2000.

**Alain Romaine**

Parol Bondie pou so Zanfan, Tex Bibliik, 2004

**Shiva Tirvengadam**

Bridging the Gap

**Vimala Devi Lutchmee**

Letters from Pre-school Trust Fund

**Jean Lindsay Dhookit**

In Praise of Kreol, I & II (articles published in L'Express 04.12.96 & 22.01.97)

**Gowtam Choychoo**

A set of 9 press articles published in Impact News

**Jimmy Harmon (BEC)**

Salient Features of Prevokbek (Centre de Formation pour Educateurs BEC, 20 Octobre 2009)

Set of books used in BEC courses.

Extract Document- Letter from H.G de St Pern to Hon. S.Obeegadoo, Minister of Education, 15 December 2004.

Internal Bilingual Evaluation: Maths/Matematik, July 2008

Internal Bilingual Evaluation: Kreol Morisien, Oral, July 2008

Open Letter to PM N.Ramgoolam: Debates on Equal Opportunity Bill- Strong Case for Kreol Morisien (Mauritian Creole) in schools.

Katsez Prevok (Commission Catechese de L'Ile Maurice, Zanvie 2008))

**Federation of Pre-School Playgroups**

Pedagogy in line with needs/rights, A child's expression through different art forms, as part of a broad based, mother tongue based multilingual education process, prepared by Federation of Pre-School Playgroups.

Plaint in the matter of The Federation of Pre-School Playgroups, Srawansing Ramsahok, Marie Sylvaine Laval v. The Minister of Education, Science & Technology, & The Republic of Mauritius, Supreme Court of Mauritius, May 1997.

Early Childhood Development, Programme Guidelines Handbook (0 – 3 years), Ministry of Women's Rights, Child Development & Family Welfare.

Early Childhood Education, Pre-School Programme Guidelines (3-5 years)

Bato Bazaar, Playgroup, 1999

Al Rod Soley, Playgroup, 1998

Abu dan Bwa, Playgroup, 1988

Sinn Sinn, Playgroup 1999

Vwayaz Ti Zanim, Playgroup, 1999

Bonnfam Lamer, Playgroup, 1987 and 2004

Marday so Zardin, Playgroup, 1999.

Pekoy al Lapes, Playgroup, 1998

Zistwar Labutik, Playgroup, 1999.

Dinododo, Playgroup, 1991.

Songs and Poems, with CD, Playgroup, 2002.

**Appendix D. International human rights documents considered**

On the *right to education*. Article 26 of the **Universal Declaration of Human Rights**

(<http://www.un.org/en/documents/udhr/>), adopted on 10 December 1948 by the United Nations General Assembly.

Paragraph 1 of Article 26 guarantees the right of everyone to education. Paragraph 2 provides that such education "shall be directed to the full development of the human personality", and "shall promote understanding, tolerance and friendship among all nations, racial and religious groups".

The **International Covenant on Economic, Social and Cultural Rights** (the "ICESCR") of 1966

(<http://www2.ohchr.org/english/law/cescr.htm>). Paragraphs 1, 2 and 3 of Article 13.

The **International Covenant on Civil and Political Rights** (the "ICCPR") of 1966

(<http://www2.ohchr.org/english/law/ccpr.htm>), Article 27.

The 1960 **Convention Against Discrimination in Education** ([http://www.unesco.org/education/pdf/DISCRIM\\_E.PDF](http://www.unesco.org/education/pdf/DISCRIM_E.PDF)), Article 5, subparagraph 1 (a) provides that Education shall be directed to, amongst other things, the full development of the human personality.

The United Nations' **Convention on the Rights of the Child** of 1989 (the "CRC"), Article 17, para 4, Article 28, paragraph 1, Article 29, para 3, and Article 30, para 2. The basic right to education is set out in Article 28, paragraph 1, in which the States parties to the CRC recognise *the right of the child to education*. The paragraph also provides that with a view to achieving this right "progressively and on the basis of equal opportunity", States will take a range of steps, including, in subparagraph (e), *measures to encourage regular attendance at schools and the reduction of drop-out rates*. Article 29, subparagraph (a) stipulates that education shall be directed to the *development of the child's personality, talents and mental and physical abilities to their fullest potential*. Article 29, subparagraph (d) stipulates that education should be directed to the development of *respect for the child's parents, his or her own cultural identity, language and values*.

The **Convention Against Discrimination in Education** of 1960 ([http://www.unesco.org/education/pdf/DISCRI\\_E.PDF](http://www.unesco.org/education/pdf/DISCRI_E.PDF)). Article 5, subparagraph 1 (a) provides that Education shall be directed to, amongst other things, the full development of the human personality.

Source: Skutnabb-Kangas, Tove & Dunbar, Robert (in press). **Indigenous Children's Education as Linguistic Genocide and a Crime Against Humanity? A Global View**. Guovdageaidnu/Kautokeino Gáldu, Resource Centre for the Rights of Indigenous Peoples (<http://www.galdu.org>).

## Appendix E. Definitions of key concepts used

**Additive teaching/learning** A child uses and develops the mother tongue up to a high formal level, at the same time as s/he adds other languages to her linguistic repertoire, through mother-tongue-based multilingual education. *Opposite*: subtractive teaching/learning.

**MT Mother tongue.** Language(s) one learns first, identifies with, and/or is identified by others as a native speaker of; sometimes also the language that one is most competent in or uses most. There may be a change of mother tongue during a person's lifetime according to all other criteria except the first. A person may have two or more mother tongues ("bilingualism/multilingualism as a mother tongue"). Indigenous or minority mother tongues are sometimes called *heritage languages* (often when children do not know them well), *home languages* (implying that they are/should not be used for official purposes), or *community languages* (falsely implying that majority populations do not form a community). The last three terms can (but need not) contribute to the minoritisation of the language(s). Even if they do not yet know (much of) a language, Deaf persons and Indigenous peoples have the right to claim a Sign language or an ancestral language as their mother tongue on the basis of identifying with it.

### MTM Mother tongue medium education

**MLE Mother-tongue-based multilingual education:** education where the children's mother tongues are officially used as the languages of instruction, initially in all subjects. Foreign languages are introduced as subjects, first orally, later also in writing. Some teaching can be done through the medium of these foreign languages, initially in subjects which are not intellectually or linguistically demanding (e.g. physical education, music, etc) and where the children can use the context to understand the teaching. Children should NOT be taught through the medium of these foreign languages in intellectually or linguistically demanding subjects (e.g. history, science, mathematics) before they have studied these languages at least 6-7 years as subjects and before they have had at least 3-4 years of teaching through these languages in "easy" subjects. In this way, children go from the known (the mother tongue) to the unknown, from the "easy" more concrete subjects/concepts/knowledge, to more demanding subjects/concepts/knowledge. They can build all further knowledge on what they already know. They can use the common underlying proficiency for all languages. It is easier, for instance, to learn to read and write in a language that one knows; children need to learn reading only once, the realisation of the relationship between what one hears (or signs) and what one sees on a page, needs to come only once, and is then easily transferred to other languages. MLE is a secure way to ensuring that children learn 2-3-4 languages at a high level.

**Submersion/"sink-or-swim" programme.** Linguistic minority or minoritised children with a low-status mother tongue are forced to accept instruction through a foreign official/dominant language, sometimes in classes in which the teacher does not understand the minoritised mother tongue, and in which the dominant language constitutes a threat to that language, which runs the risk of being replaced; a *subtractive* language learning situation. In another variant, stigmatised and minoritised majority children (or groups of minority children in a country with no decisive numerical and/or power majorities) are forced to accept instruction through the medium of a foreign (often former colonial) high-status language (because official mother tongue medium education does not exist even if the mother tongue may be used orally in the classroom to help children understand what the teacher says). This often occurs in mixed mother tongue classes, mostly without native speakers of the language of instruction, but also in linguistically homogenous classes, sometimes because mother tongue education does not exist or because the school or teachers hesitate to implement a mother tongue-medium programme. The teacher

may (or may not) understand children's mother tongue(s). The foreign language is not learned at a high level, at the same time as children's mother tongues are displaced and not learned in formal domains (e.g., mother-tongue literacy is not achieved). Often the children are made to feel ashamed of their mother tongues, or at least to believe in the superiority of the language of instruction. *Opposite*: mother-tongue-based multilingual education.

**Subtractive language teaching/ learning.** A new, dominant/foreign language is learned *at the cost of the mother tongue*, which is replaced or displaced, with a resulting diglossic situation. The individual's total linguistic repertoire does not grow. *Opposite*: additive language teaching/ learning.

**Transitional early-exit and late-exit programmes.** Linguistic minority or minoritised children with a low-status mother tongue are initially instructed through the medium of their mother tongue for a few years; the mother tongue is used as an instrument for acquisition of the dominant language and content. In *early-exit* programmes, children are transferred to a majority-language medium programme as soon as they develop (some) oral communicative competence in the dominant language, in most cases after one to three years. In *late-exit* programmes children may receive some instruction through L1 up to the fifth or sixth grade; sometimes the mother tongue is taught as a subject thereafter. For both program types, the primary goal is proficiency in the dominant language.

## Appendix F. Some recent African documents

The African Union, in three landmark historic documents, *African Cultural Renaissance Charter (AU2006a)*, *Language plan of Action for Africa (AU2006b)* and *The Statutes of the African Academy of languages (AU 2006c)* (see [www.acalan.org](http://www.acalan.org) for these) clearly require every member state of the Union to take urgent measures to ensure that local African languages are used as medium of instruction in education and ultimately as languages of administration along with the official languages of the colonial *legacy* which henceforth become 'partnership languages' to African languages in the enterprise of national development. These documents and instruments were presumably signed by all Heads of states or their representatives at the Khartoum summit of the African Union in January 2006 and therefore constitute a commitment, an engagement, an undertaking to ensure the use of the mother tongue in education and eventually for various aspects of governance.

## Appendix G. Why MLE for Mauritius?

### WHY MOTHER-TONGUE-BASED MULTILINGUAL EDUCATION (MLE)?

Often asked questions and doubts that school authorities and politicians might have - and even parents...

**Why should children be taught mainly through the medium of their mother tongue (MT) in school for the first 6-8 years? They know their MT already?**

When children come to school, they can talk in their MT about concrete everyday things in a face-to-face situation in their own environment where the context is clear: they can see and touch the things they are talking about and they get immediate feedback if they do not understand ("I didn't mean the apples, I asked you to bring bananas"). They speak fluently, with a native accent, and they know the basic grammar and many concrete words. They can explain all the basic needs in the MT: they have *basic interpersonal communicative skills (BICS)*. This may be enough for the first grades in school where teachers are still talking about things that the child knows. But later in school children need abstract intellectually and linguistically much more demanding concepts; they need to be able to understand and talk about things far away (e.g. in geography, history) or things that cannot be seen (e.g. mathematical and scientific concepts, honesty, constitution, fairness, democracy). They need to be able to solve problems using just language and abstract reasoning, without being able to do concrete things ("if I first do A, then either D or E happens; if I then choose K, X may happen but Y may also happen; therefore it is best to do B or C first"). The *cognitive-academic language proficiency (CALP)* that is needed to manage from grade 3 on in school, in higher grades, upper secondary school and later in life, develops slowly. Children need to develop these abstract concepts on the basis of what they already know in their mother tongue. If the development of the mother tongue CALP (which mainly happens through formal education) is cut off when the child starts school, s/he may never have an opportunity to develop higher abstract thinking in any language.

If teaching is in a foreign power language that a Kreol-speaking child does not know (e.g. English), the child sits in the classroom the first 2-3 years without understanding much of the teaching. S/he may repeat mechanically what the teacher says, without understanding, without developing her capacity to think with the help of language, and without learning almost anything of the subjects that she is taught. This is why many Kreol-speaking children leave school early, not having learned much English, not having learned properly how to read and write, not having developed their mother tongue, and almost without any school knowledge.

If the child has the mother tongue (MT), here Kreol, as the teaching language, s/he understands the teaching, learns the subjects, develops the CALP in the MT, and has very good chances of becoming a thinking, knowledgeable person who can continue the education.

**Parents want children to learn English (and French). If children are taught mainly through their MT the first many years, how do they learn English (and French)?**

All MLE (Mother-tongue-based MultiLingual Education) programmes should teach English as a SECOND language subject from grade 1 or 2. The teachers know both the children's MT and English. In the CALP part of language, much is shared in the MT and English (and other additional languages such as French). The child needs to learn reading and writing only once in life, and it is easiest to learn it in a language that one knows well. When the child has understood the relationship between what one hears and speaks, and the reading/writing system, in the MT, this can easily be transferred to other languages (even if the script may be different). When the child has learned many abstract concepts in the MT, s/he just needs to learn the "labels", new words for them in English; s/he already knows the concepts (even if there are, of course, cultural differences in nuances). In this way, only parts of the language (English) is new; the child already knows the content in various subjects (e.g. in mathematics). All languages share a *common underlying proficiency*. When the child develops this proficiency in the language she knows best, the MT, it is easily transferred to other languages. And when the child is already high-level bilingual in the MT and English, she learns French and other languages faster and better than if she starts French learning as monolingual in the MT. She needs fewer years of and less exposure to French, to learn it well. All research studies in the world show that the longer the child has the MT as the main medium of education, the better the child learns the subjects and the better s/he also becomes in the dominant language of the country and in additional languages. The number of years in MT-medium education is also more important for the results than the parents' socio-economic status. This means that MLE also supports economically poor children's school achievement.

**Isn't it enough if children have the first 3 years in the MT and then the teaching can be in English?**

3 years of MT-medium teaching is much better than having all the teaching in English, but 3 years is NOT enough. The CALP development is nowhere near a high enough level in the MT after 3 years. 6 years in the MT is an absolute minimum, but 8 years is better. Ethiopia, one of the poorest countries in Africa, has a decentralised education system where 8 years of mother-tongue-based MLE is recommended. Some districts have chosen to have only 4 or 6 years of MT-medium. Comparing results from the whole country, a large study shows that those who have had 8 years of mainly MT-medium and who have studied Amharic (the dominant Ethiopian language) and English as subjects, have the best results in science, mathematics, etc, and also in English. Those with 6 years are not as good, and those who have switched to English-medium already after grade 4, have the worst results, also in English.

**Parents want English-medium schools. What are the likely results?**

Many studies in India show that children in English-medium private schools initially know English better than children in MT or regional language medium government schools. But at the end of grade 8, the knowledge in the various subjects of the students in English-medium schools is lower than in government schools, and their English is no better. In addition, they do not know how to read or write their MTs and do not have the vocabulary to discuss what they have learned in any Indian languages. They have sacrificed knowledge of Indian languages and much of the knowledge of school subjects but they only get a proficiency in the English language that is not at a high level. This is partly because the English language competence of teachers is generally not very high, but also because the children have not been able to develop a high-level CALP, neither in the MTs nor in English.

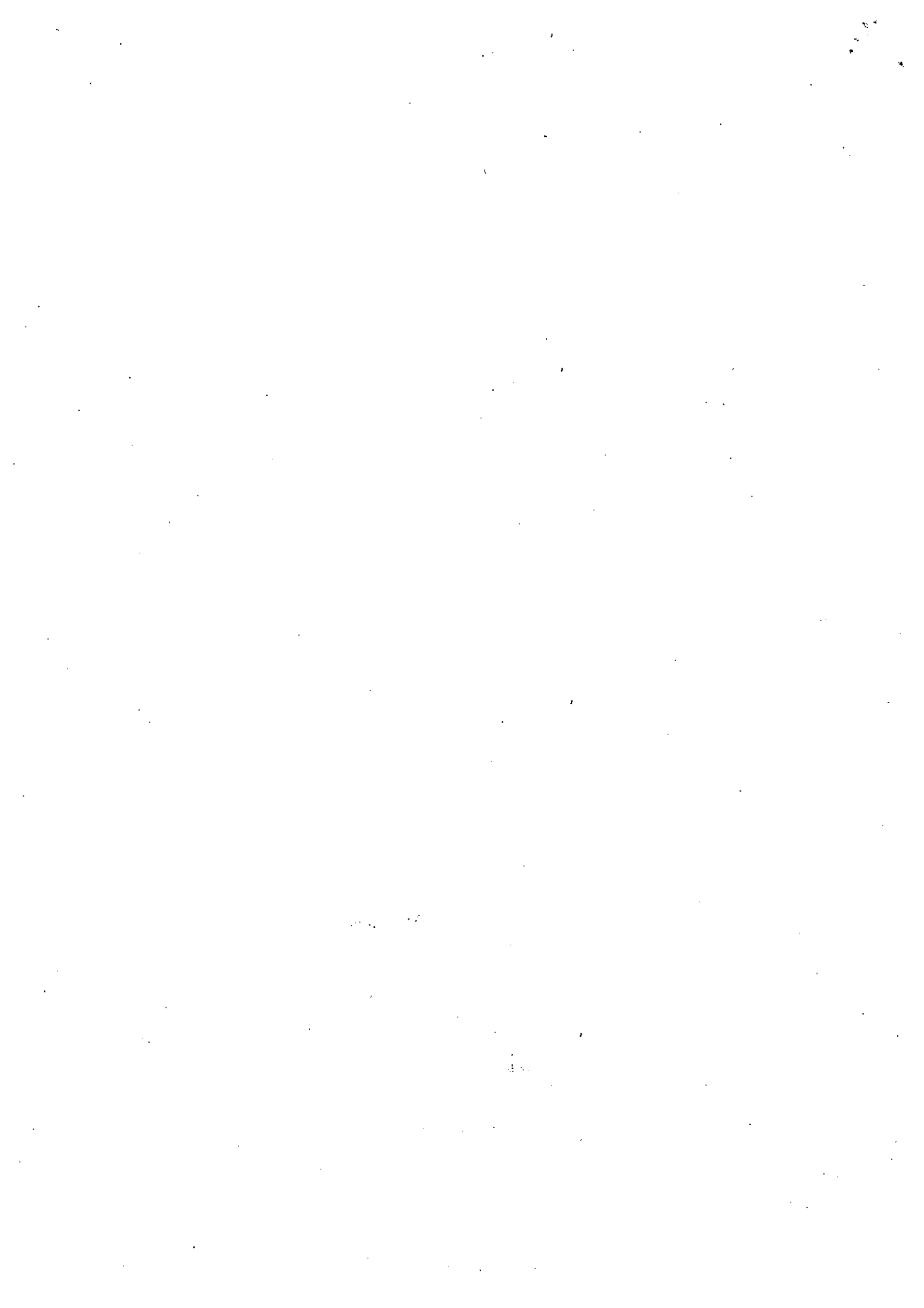
**Mother-tongue based MLE for the first 6-8 years, with good teaching of English as a second language and French as a foreign/second language, and possibly other languages too, with locally based materials which respect local knowledge, seems to be a good research-based recommendation for Mauritius.**

*Tove Skutnabb-Kangas, [www.Tove-Skutnabb-Kangas.org](http://www.Tove-Skutnabb-Kangas.org)*



## H. "What's in the words!" Sample testimony from witnesses

1. 'Ena mem reponn an Kreol pu legzame pu kesyon poze an Angle.'  
*Some even answer in Kreol to examination questions set in English.*
2. 'Shakespeare ek Moliere ti kreatif dan zot langaz.'  
*Shakespeare and Moliere were creative in their mother tongues.*
3. 'Nu koz seki tabu dan langaz maternel'  
*We use the mother tongue to discuss taboos.*
4. 'Ledikasyon bizin enn plezir, pa enn fardo.'  
*Education should be fun, not a burden.*
5. 'Mo pli gran kado se mo de langaz maternel'  
*The greatest gift I've ever received is my two mother tongues.*
6. 'Se apartir langaz maternel ki nu konstrir nu personalite'  
*Our personality is built on our mother tongue.*
7. 'Zanfán plis ere kan zot aprann dan zot langaz maternel.'  
*Children are happier when taught in their mother tongue.*
8. 'Bhojpuri hamar ma.'  
*Bhojpuri is my mother.*
9. 'Se enn identite ki disparet kan langaz maternel pa ansenye.'  
*Identity is obliterated when the mother tongue is not taught as subject.*
10. 'Enn langaz develop tu so potential selman kan li ekri.'  
*The full potential of a language is developed only when it's written.*
11. 'Nu fel parski sistem la kuyon.'  
*We fail because the system is stupid.*
12. 'Profeser pas so letan tradwir an Kreol.'  
*The teacher spends all his time translating into Kreol.*
13. 'Nu ena sufrans ki nu pe viv tulezur aköz nu langaz'  
*We suffer day in day out because of our language.*
14. 'Sistem lazistis fer linzistis aköz problem langaz'  
*The legal system causes a lot of injustice because of language difficulties.*
15. 'Lekol denigre nu kiltir ek nu langaz.'  
*The school vilifies our culture and language*
16. 'Mo pa ti koz Franse alor mó pa ti gagn permisyon pu al twalet.'  
*I couldn't speak French, and I had to ask to go to the toilet in French.*
17. 'Mem program politik li pibliye an Angle ek Franse. Kot demokrasi partisipativ?'  
*Even political programs are published by the parties in English and French. What does this mean for democracy?*
18. 'Mo zanfán panvi al lekol parski li pa konpran langaz servi.'  
*My child doesn't want to go to school because she can't understand the language used.*
19. 'Bizin kumans avek seki nu kone pu aprann seki nu pa kone '  
*We need to use the known medium to discover the unknown .*
20. 'U pa finn fel, se lekol ki finn fel.'  
*You didn't fail in school, the school failed you.*



**NALSAR**  
**University of Law, Hyderabad.**  
**(Academic Year: 2018-2019)**  
**PH.D ENTRANCE EXAMINATION**  
**(Date of Examination: 23.06.2018)**

**Total Marks: 50**  
**Time: 12.30 pm to 1.30 pm**

**INSTRUCTIONS:**

1. Read the questions carefully and answer.
  2. No clarification shall be sought on the question paper.
  3. Don't write any thing on the question paper. It will be treated as malpractice.
  4. Do not exceed the word limit.
  5. **ATTEMPT ONLY ONE SECTION**
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**PART - II**

**SECTION - A**

**SOCIAL SCIENCES / HUMANITIES**

1. In about 600-800 words, write about the research project that you intend to take up for your Ph.D. Mention the area of knowledge in which your proposed research is located and give details of the preliminary research that you may have done in this area. Elaborate on the specific research questions that you want to pursue and briefly explain the theoretical, archival and any other sources that you think are crucial for your project. Also, discuss the research methodology that you would like to follow.

Note: You can always modify/change the topic later, if you wish.

**(50 Marks)**

**OR**

2. Thomas Piketty in his *Capital in the Twenty-First Century*, formulates a theory of capital and inequality from the historical perspective. As a general rule wealth grows faster than economic output, he explains, a concept he captures in the expression  $r > g$  (where  $r$  is the rate of return to wealth and  $g$  is the economic growth rate). Other things being equal, faster economic growth will diminish the importance of wealth in a society, whereas slower growth will increase it (and demographic change that slows global growth will make capital more dominant). But there are no natural forces pushing against the steady concentration of wealth. In the light of above statement, discuss in detail the following questions:

- A. Has economic liberalization led, in India, to the intensification of economic and social inequalities? **(25 Marks)**
- B. What has been the response of the Indian state in handling social and economic inequalities? **(25 Marks)**

## SECTION – B

### LAW

1. If you are a legal researcher, write an essay reviewing a recent and significant Indian judgement, legislative or international development, or scholastic exposition in your domain area. Ensure that your essay explicates how this judgement/development/exposition will influence the existing legal position, approach or concepts or ongoing issues/controversy in your field of research **(50 Marks)**

## SECTION – C

### MANAGEMENT

1. A scientific approach to management research relies more on the systematic analysis of the hypothetical proposition of observed relationship of phenomena. Depending on a researcher's conditioning and interest, a scientific inquiry may take one of the two possible forms: inductive or deductive. Identify a specific research problem/issue of your interest area and write a research proposal to address the same using inductive or deductive approach. The research proposal must include the followings:

- a. The relevance of the research problem/issue, research questions, theoretical background, possible theoretical and managerial implications. **(20 Marks)**
- b. Proposed Research design (operationalization of constructs, research methods, and sampling strategy) with the justification of appropriateness of the same **(20 Marks)**
- c. Proposed tools and techniques of data analysis (with justification) **(10 Marks)**

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