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From the Editor's Desk

Dear Readers,

In the dynamic landscape of the law, our commitment to fostering meaningful discussions on contemporary legal issues has never been more vital. This edition of our law journal is dedicated to the exploration and analysis of the pressing legal challenges that define our era.

As we peruse the pages of this issue, we embark on a journey through diverse and timely legal topics, each contributing to the rich tapestry of legal thought. Our contributors, comprising of esteemed scholars, practitioners, and thought leaders, delve into the intricacies of contemporary legal issues, offering perspectives that reflect the complexity and nuance inherent in our rapidly evolving world.

From groundbreaking court decisions to legislative developments, this issue spans a spectrum of legal domains, each presenting its own set of challenges and opportunities. Whether grappling with the intersection of technology and privacy, the evolving landscape of climate change, or the intricate dynamics of IPR, our authors navigate the terrain of contemporary legal issues with rigor and insight.

We initiate this literary journey with Handa S. Abidin and Andi Freeda Azizah Rezal's article on the examination of Climate related tweets and their relation with the Paris agreement. Dr. Anila V Menon's paper analyzes the concept of Data Protection in the Indian Context. This paper explores the state of Data Privacy and Protection in India and examines the legal landscape surrounding the same. Shaheen Marakkar's article on the Doha Declaration and its significance in promoting patent flexibility for public health where in the author evaluates various aspects of The Doha Declaration on the Trade-related Intellectual Property Rights (TRIPS) agreement and the significant flexibilities that were introduced to reconcile patent rights with public health imperatives and evaluates South Africa's medicines and Related Substances Control Amendment Act of 1997. Chandni Malhotra talks about the Digital Nomads in Dubai-Beginning to a New Era of Residency. In this article the author evaluates the journey of remote workers who travel away from their home country and how COVID-19 changed the entire ballgame of a 9-5 desk job. In the next article, the authors Neelam Faizan & Kulsum Haider analyze childcare institutions and the need for their strengthening under the juvenile justice system. Aniket Jadhav's article on The Chicago Trial vis a vis Right to Protest in India, outlines on the topic of the significant civil rights that took place in Chicago over several months from September 1969 to February 1970. In the context of India, the abstract analyzes the parallels and divergences between the Chicago trial and the Right to Protest in the Indian legal framework. Interesting insights into the various facets of law and related disciplines can be found in readers by the other articles.

This collection serves as a testament to the adaptability of the law in the face of societal shifts and technological advancements. It is our hope that the analyses presented herein not only deepen your understanding of these issues but also spark meaningful conversations and inspire further exploration.

The legal community plays a pivotal role in shaping the course of societal progress, and as we confront the complexities of current legal issues, we invite our readers, to engage actively in the ongoing discourse. Your perspectives, insights, and contributions are integral to the evolution of legal thought and practice.

Thank you for joining us on this intellectual journey. We trust that the knowledge shared in this edition will not only inform but also inspire the continued pursuit of justice, equity, and the rule of law.

Sincerely,

Dr Sagee Geetha Sethu

Editor-in-Chief, Amity Law Journal

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THE CLIMATE TWEETS OF ANTÓNIO GUTERRES AND THEIR RELATIONS WITH THE PARIS AGREEMENT

Handa S. Abidin* and Andi Freeda Azizah Rezal**

Abstract

The United Nations Secretary-General, António Guterres, devotes a sizable portion of his activity on the social media platform Twitter (@antonioguterres) to climate change. Throughout the years of 2017 to 2022, Guterres sent out 4,168 tweets. Approximately 18% of these tweets explicitly included the word “climate”. This percentage excludes tweets that can be related to climate change but do not include the word “climate”. The authors’ examination shows that in his climate-related tweets, Guterres has never discredited or undermined the Paris Agreement. In fact, Guterres’ tweets are always supportive of the Paris Agreement, and can be connected to endeavors that promote the fulfilment of the Paris Agreement. The climate tweets posted by Guterres serve as reminders, motivations, and critiques for the Parties to the Paris Agreement and relevant stakeholders in implementing the Paris Agreement.

Keywords: *Climate Change, Climate Tweet, Twitter, António Guterres, United Nations Secretary-General*

I. Introduction

Twitter had nearly a quarter of a billion monetizable daily active users in Q2 2022.¹ In comparison with a list of national populations around the world, the 238 million Twitter users would constitute the fifth largest after Indonesia (the fourth largest with 273 million people) and the United States (the third largest with 331 million people).² Courts, judges, legal scholars, and shareholders are among the parties that use Twitter to disseminate updates and express their opinions.³

The climate change movement on Twitter has been acknowledged in previous research.⁴ António Guterres, the United Nations Secretary-General (hereafter: the SG), has more than two million followers with more

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¹ Elon Musk disagrees with this number; he thinks the actual number of monetizable users is lower than that which was claimed by Twitter, see: Twitter Inc. vs. Elon R. Musk, X Holdings I, Inc., and X Holdings, Inc., “Defendants’ Verified Counterclaims, Answer, and Affirmative Defences to Plaintiff’s Verified Complaint” (Del. Ch.) C.A. No. 2022-0613-KSJM, e.g.: 3, 8-9, and 14-15.

² Ibid. The population data for Indonesia and the United States are based on 2021 data, see: “Population, Total”, World Bank, accessed December 26th, 2022, <https://perma.cc/83X5-LWR5>. For Twitter’s user population over the past few years, see: (1) Edith Brown Weiss, “International Law in a Kaleidoscopic World”, *Asian Journal of International Law* 1, no. 1 (January 2011): 21-32, 23; and (2) Elizabeth Thornburg, “Twitter and the #So-Called Judge”, *SMU Law Review* 71, no. 1 (Winter 2018): 249-314, 254.

³ (1) Margaret Jackson and Marita Shelly, “The Use of Twitter by Australian Courts”, *Journal of Law, Information and Science* 24, no. 1 (2015): 83-100; (2) Ibid, Thornburg; (3) Carissa Byrne Hessick, “Towards a Series of Academic Norms for #LawProf Twitter”, *Marquette Law Review* 101, no. 4 (Summer 2018): 903-924; (4) Sarah Joseph, “Social Media and Promotion of International Law”, *Proceedings of the Annual Meeting*, published by the American Society of International Law 109 (2015): 249-254, 249-250; and (5) Seth C. Oranburg, “A Little Birdie Said: How Twitter Is Disrupting Shareholder Activism”, *Fordham Journal of Corporate and Financial Law* 20, no. 3 (2015): 695-716, 696-697.

⁴ Jeremy R. McClane, “Class Action in the Age of Twitter: A Dispute Systems Approach”, *Harvard Negotiation Law Review* 19 (2014): 213-284, 242.

than 4,000 tweets as of December 31st, 2022.⁵ Guterres, who joined Twitter in December 2016, is the first SG to use Twitter for his work.⁶ When he took over the role of SG on January 1st, 2017,⁷ he immediately took to Twitter to welcome the new year and communicate his resolution towards peace.⁸ His tweets concentrate mainly on global issues such as humanitarian crises and climate change.⁹ His first climate tweet was related to climate initiatives in cities, and his last tweet in 2022 expressed his appreciation for “young #ClimateAction activists”.¹⁰

The 1945 United Nations Charter (UN Charter) is firm in its stance that the SG cannot be controlled by any country or party.¹¹ The position of the SG in the UN Charter is the organization’s (UN) “chief administrative officer”.¹² The SG is also considered to be “equal parts diplomat and advocate, civil servant and CEO, [...] a symbol of United Nations ideals and a spokesperson for the interests of the world’s peoples”.¹³ Other designations have been used to refer to the SG, such as: “norm entrepreneur”¹⁴, “authoritative interpreter of the Charter”¹⁵, “guardian of the principles of the UN Charter”¹⁶, “head of all international civil servants”¹⁷, “spokesperson of worldwide civil society”¹⁸, “spokesman for the Assembly’s

⁵ These tweets include retweets and replies, see: António Guterres (@antonioguterres), Twitter, <https://perma.cc/KCJ6-T657>. Starting from the following tweet, “Antonio Guterres (@antonioguterres)” will be referred to as “Guterres”.

⁶ Ibid. Kofi Annan created a Twitter account in November 2010 after he served as the SG; his account’s most recent tweet was in 2019, see: Kofi Annan (@KofiAnnan), Twitter, <https://perma.cc/X8DL-93MW>.

⁷ “Biography”, United Nations, accessed December 16th, 2022, <https://perma.cc/K6AB-BUK7>.

⁸ Guterres, Twitter (12:00 p.m. Western Indonesia Time, January 1st, 2017), <https://perma.cc/X97N-WXQD>. “Western Indonesian Time” will be referred to as “WIB” (Waktu Indonesia Barat).

⁹ See in general the SG’s tweets: Guterres (n. 5).

¹⁰ (1) Guterres, Twitter (04:47 a.m. WIB, March 2nd, 2017), <https://perma.cc/PB4Z-M69X>; and (2) Guterres, Twitter (11:00 p.m. WIB, December 26th, 2022), <https://perma.cc/3KEJ-D5DS>.

¹¹ Charter of the United Nations (adopted June 26th, 1945, entered into force October 24th, 1945) (UN Charter), art. 100 para. 1, see also: para. 2. See also: Ramesh Thakur, “Choosing the Ninth United Nations Secretary-General: Looking Back, Looking Ahead”, *Global Governance* 23, no. 1 (January-March 2017): 1-14, 1-2.

¹² Ibid, UN Charter, art. 97. See also, e.g.: (1) “The Role of the Secretary-General”, United Nations, accessed December 26th, 2022, <https://perma.cc/H6BF-QE2S>; (2) Charles Henry Alexandrowicz, “The Secretary-General of the United Nations”, *International & Comparative Law Quarterly* 11, no. 4 (1962): 1109-1130, 1111-1112, 1116, and 1119; (3) Simon Rushton, “The UN Secretary-General and Norm Entrepreneurship: Boutros Boutros-Ghali and Democracy Promotion”, *Global Governance* 14, no. 1 (January-March 2008): 95-110, 97; (4) Simon Chesterman, “The Secretary-General We Deserve”, *Global Governance* 21, no. 4 (October-December 2015): 505-514, 505 and 510; and (5) Ratna Juwita, “An Aretaic Jurisprudence Approach to the Character of the Secretary-General of the United Nations as a Norm Entrepreneur to Save the Earth from the Adverse Impact of Climate Change”, *Korean Journal of International Law and Comparative Law* 6, no. 1 (June 2018): 30-46, 30, 33-34, 36, 42, and 46.

¹³ Ibid, “The Role of the Secretary-General”, United Nations.

¹⁴ E.g.: (1) Rushton (n. 12) 96, 98-100, and 104-106; (2) Chesterman (n. 12) 506; (3) Daisuke Madokoro, “How the United Nations Secretary-General Promotes International Norms”, *Global Responsibility to Protect* 7, no. 1 (2015): 31-55, 32-40, 46-47, and 53-54; and Juwita (n. 12) 30, 33-34, 36-39, 42-43, and 45-46.

¹⁵ Ibid, Rushton, 98.

¹⁶ B. G. Ramcharan, “The Office of the United Nations Secretary-General”, *Dalhousie Law Journal* 13, no. 2 (November 1990): 742-757, 744 (citing TM Frank).

¹⁷ Madokoro (n. 14) 36. See also: Juwita (n. 12) 36 (for: “head of international civil servants”).

¹⁸ Ibid.

majority”¹⁹, “flag bearer for the United Nations”²⁰, “international statesman”²¹, “world premier diplomat”²², “world’s diplomat”²³, and as a “CEO”²⁴ of the United Nations.

The SG is also recognized as a defender of “the poor and vulnerable”.²⁵ Guterres is one of the Secretaries-General whose primary focus has been on climate change.²⁶ In this context, Guterres has tweeted that those who are “poor and vulnerable” as well as “the poorest & most vulnerable” are the most impacted parties.²⁷ Guterres has stated that “[...] the fight against the climate crisis is the most important battle of my life”.²⁸ However, the SG also notes that world leaders have “dropped” the “priority” of the climate change agenda.²⁹

The SG is in charge of heading the Chief Executives Board for Coordination (CEB) of the UN which is comprised of various “Executive Heads of the United Nations”.³⁰ Climate change is an important topic that the CEB focuses on.³¹ The CEB also requested that the Executive Secretary of the United Nations Framework Convention on Climate Change (UNFCCC) be present at its session.³² The UNFCCC’s Executive Secretary is “appointed” by the SG.³³ In August 2022, Simon Stiell stepped into this role to head the UNFCCC Secretariat.³⁴ The post of the UNFCCC Executive Secretary is equivalent to that of an Under-Secretary-General.³⁵

This article aims to explore how Guterres utilizes Twitter to advocate for the climate agenda in the UNFCCC regime. To accomplish this, the authors examine 4,168 tweets from 2017 to 2022, posted by Guterres throughout his first and the beginning of his second terms as the SG.³⁶ Among these, more than 750 tweets explicitly contain the word “climate”.³⁷ These tweets are in addition to tweets that can

¹⁹ William D. Jackson, “The Political Role of the Secretary-General under U Thant and Kurt Waldheim: Development or Decline?”, *World Affairs* 140, no. 3 (Winter 1978): 230-244, 243.

²⁰ Ramcharan (n. 16) 756.

²¹ (1) *Ibid*, Ramcharan, 755 (citing S. Schwebel); and (2) Jackson (n. 19) 239.

²² Juwita (n. 12) 30, 33, 36, 42, and 46.

²³ Chesterman (n. 12) 505, 510, and 512.

²⁴ (1) Thakur (n. 11) 1; (2) Brian Urquhart, “The Next Secretary-General: How to Fill a Job with No Description”, *Foreign Affairs* 85, no. 5 (September/October 2006): 15-23, 22; (3) Catherine Tinker, “The Changing Role of the UN Secretary-General”, *Proceedings of the Annual Meeting (American Society of International Law)* 86, (1992): 308-312, 309 and citing James Sutterlin (311); and (4) “The Role of the Secretary-General”, United Nations (n. 12).

²⁵ *Ibid*, “The Role of the Secretary-General”, United Nations.

²⁶ See in general: (1) Guterres (n. 5); and (2) Juwita (n. 12) 34 and 41-46. See also: Thakur (n. 11) 4.

²⁷ (1) Guterres, Twitter (04:21 a.m. WIB, September 20th, 2019), <https://perma.cc/5FE8-NFSV>; and (2) Guterres, Twitter (07:54 p.m. WIB, October 18th, 2020), <https://perma.cc/2YJN-BWNJ>.

²⁸ Guterres, Twitter (05:30 a.m. WIB, November 12th, 2021), <https://perma.cc/8CN6-RN3F>.

²⁹ See e.g.: Guterres, Twitter (03:00 p.m. WIB, September 21st, 2022), <https://perma.cc/PV37-Z3BG>.

³⁰ “Board Members”, UN System Chief Executives Board of Coordination (CEB), accessed December 26th, 2022, <https://perma.cc/LVH4-37JZ>; (2) “FAQ”, CEB, accessed December 26th, 2022, <https://perma.cc/R8AB-GF3G>; (3) “About”, CEB, accessed December 26th, 2022, <https://perma.cc/3VRY-SNPM>; and (4) “The Role of the Secretary-General”, United Nations (n. 12).

³¹ “Climate Change”, CEB, accessed December 28th, 2022. <https://perma.cc/8SCU-TQCQ>.

³² “Board Members”, CEB (n. 30).

³³ “Executive Secretary”, UNFCCC, accessed December 27th, 2022, <https://perma.cc/9646-XUG2>.

³⁴ *Ibid*. For the structure of the UNFCCC Secretariat, see: “Secretariat Structure”, UNFCCC, accessed December 28th, 2022, <https://perma.cc/LU4B-59MR>.

³⁵ COP (UNFCCC), “Decision 22/CP.22, Financial and Budgetary Matters” FCCC/CP/2016/10/Add.2 (January 31st, 2017), preamble paras. 1 and 3-4, and para. 1. See also e.g.: COP (UNFCCC), “Decision 22/CP.26, Programme Budget for the Biennium 2022–2023” FCCC/CP/2021/12/Add.2 (March 8th, 2022), table 2.

³⁶ See: footnote 5. See also: “António Guterres Secures Second Term as UN Secretary-General, Calls for New Era of ‘Solidarity and Equality’”, United Nations, posted June 18th, 2021, <https://perma.cc/FR8D-MA56>.

³⁷ See: *ibid*, footnote 5.

be implicitly associated with climate change because they contain terms related to climate change, or because their content can be associated with climate change.³⁸

The authors categorize Guterres' tweets according to the Conference of the Parties (COP) events. The COP-based tweets focus on climate tweets from Guterres in response to the COP 23 to the COP 27 during the period when Guterres has been actively serving as the SG. The authors examine the content of the Guterres' climate tweets prior to, during, and after the COP 23 to the COP 27, and compare them to the text of the Paris Agreement.

The climate tweets made prior to a COP are identified by looking for specific hashtags related to that COP (for example: #COP27), or by examining whether the tweet explicitly mentions that it is referring to that particular COP. The identification of climate tweets posted during a COP is achieved by examining whether the tweets include a specific hashtag related to the COP, whether they were posted during the course of the COP events, and whether they can be linked either directly or indirectly to climate change. Climate tweets after the end of a COP are identified as climate tweets posted on the same day of the closing of the COP. Furthermore, climate tweets related to the Paris Agreement outside of the COP are also examined in this research.

It should be recognized that a single climate tweet might include many topics, and not every tweet shall be scrutinized to have its contents determined for this research. Furthermore, not all of Guterres' climate tweets will be discussed in this research. Nonetheless, this research is intended to shed light on the connection between Guterres' climate tweets and the Paris Agreement, mainly concerning whether or not the tweets provide direct or indirect support for the Paris Agreement. In a wider context, social media, including Twitter, can contribute to advancing international law.³⁹ In general, this research also intends to improve the advancement of the literature on international law through the analysis of social media responses—specifically from Guterres' climate tweets—to topics on international climate change law.

II. The Paris Agreement and Guterres' Climate Tweets in Relation to the Cop 23 - Cop 27

Guterres demonstrates “persuasive powers”⁴⁰ in his climate tweets in support of the Paris Agreement, whether these were in the context of the COP and the Paris Agreement or unrelated to the COP but related to the Paris Agreement as will be described in the subsequent paragraphs. One of the forms of “persuasive powers”⁴¹ presented by Guterres is in the form of “mobilizing shame”⁴² for certain parties.⁴³ The values of “aretai”⁴⁴ and “norm entrepreneurship”⁴⁵ are also expressed in Guterres' climate tweets, which are described below, although there are some tweets with tones that fail to reflect the quality of “patience”⁴⁶.

In general, it is relevant to directly or indirectly connect Article 2 Paragraph 1 (a) of the Paris Agreement to all the climate tweets by Guterres, which is:

³⁸ See: *ibid.*

³⁹ See in general: Joseph (n. 3).

⁴⁰ For a discussion concerning “persuasive powers”, see: Ian Johnston, “The Role of the UN Secretary-General: The Power of Persuasion Based on Law”, *Global Governance* 9, no. 4 (October-December 2003): 441-458, 441-442, and 451-454.

⁴¹ See: *ibid.*

⁴² See: *ibid.*, 453.

⁴³ See footnotes 82, 121, and 150.

⁴⁴ See in general: Juwita (n. 12).

⁴⁵ See footnote 14, for the context of climate change, see: *ibid.*, Juwita.

⁴⁶ *Ibid.*, Juwita, 37. See also footnotes 82, 121, and 150.

“This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by: (a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.”⁴⁷

Article 4 Paragraph 1 of the Paris Agreement also has a similar character to Article 2 Paragraph 1 (a), particularly regarding the implementation of Article 2.⁴⁸ There are also tweets which can be associated with the Paris Agreement in a wider sense due to their general nature.

The number of tweets posted by Guterres in relation to the COP 23 (November 6th-18th, 2017 in Bonn, Germany)⁴⁹ was the lowest during his term of office so far.⁵⁰ Only two of his tweets directly referenced the COP 23 (mentioning “@COP23”) in 2017.⁵¹ The content of the two explicit tweets at the time urged “leaders” and “world leaders” to increase their efforts to address climate change.⁵² There was one tweet that did not explicitly reference the COP 23, but its substance was related to climate change and it was posted during the COP 23.⁵³ This tweet concerns the existence of the Paris Agreement because of its reference to the alarming growth of CO2 emissions.⁵⁴

The COP 24 was held on December 2nd-16th, 2018 in Katowice, Poland.⁵⁵ Prior to its commencement, Guterres posted a tweet expressing his support for the Paris Agreement in connection to the COP 24 event.⁵⁶ He also tweeted about the need for “global cooperation” in addressing climate change⁵⁷, noted that the objective of lowering carbon emissions should not be compromised in exchange for a rising economy⁵⁸, and posted a congratulatory tweet for Germany on its Green Climate Fund’s funding⁵⁹. During the COP 24, an explicit tweet related to the Paris Agreement was sent by Guterres welcoming the Katowice’s Paris

⁴⁷ Paris Agreement (adopted December 12th, 2015, entered into force November 4th, 2016) art. 2 para. 1 (a).

⁴⁸ Ibid, art. 4 para. 1 and art. 2.

⁴⁹ (1) “COP23”, UNFCCC, accessed January 2nd, 2023, <https://perma.cc/R4U9-YL48>; (2) “Bonn: UN Conference Closes with Renewed Urgency for Greater Ambition to Tackle Climate Change”, United Nations, posted November 17th, 2017, <https://perma.cc/5GPJ-7Y6Q>; (3) UN Climate Change (@UNFCCC) (hereinafter: UNFCCC), Twitter (09:03 p.m. WIB, November 6th, 2017), <https://perma.cc/NY5L-K6RX>; and (4) UNFCCC, Twitter (06:33 a.m. WIB, 18 November 18th, 2017), <https://perma.cc/9HMT-6QE6>.

⁵⁰ See in general: Guterres (n. 5).

⁵¹ (1) Guterres, Twitter (06:39 p.m. WIB, November 14th, 2017), <https://perma.cc/9A9E-Y2BB>; and (2) Guterres, Twitter (06:20 p.m. WIB, November 15th, 2017), <https://perma.cc/6KZS-Q6LG>.

⁵² Ibid. See in general: Paris Agreement (n. 47).

⁵³ Guterres, Twitter (06:40 p.m. WIB, November 14th, 2017), <https://perma.cc/YY76-N3XQ>.

⁵⁴ Ibid. See in general: Paris Agreement (n. 47).

⁵⁵ (1) “Katowice Climate Change Conference – December 2018”, UNFCCC, accessed January 2nd, 2023, <https://perma.cc/2JCD-Y6VT>; (2) “At COP24, Countries Agree Concrete Way Forward to Bring the Paris Climate Deal to Life”, United Nations, posted December 15th, 2018, <https://perma.cc/Y3HL-VYX5>; (3) UNFCCC, Twitter (06:34 p.m. WIB, December 2nd, 2018), <https://perma.cc/QY2J-XLG7>; and (4) UNFCCC, Twitter (04:23 a.m. WIB, December 16th, 2018), <https://perma.cc/VZ33-NWCU>. See in general: Guterres (n. 5).

⁵⁶ Guterres, Twitter (03:51 a.m. WIB, November 18th, 2018), <https://perma.cc/6SPC-X8J5>. See in general: Paris Agreement (n. 47).

⁵⁷ Guterres, Twitter (12:42 a.m. WIB, November 29th, 2018), <https://perma.cc/NTX8-WBU3>. See: *ibid*, Paris Agreement, e.g.: art. 2 para. 1 and art. 3.

⁵⁸ Guterres, Twitter (04:15 a.m. WIB, November 29th, 2018), <https://perma.cc/42SB-JYFL>. See: *ibid*, Paris Agreement, e.g.: preamble para. 10.

⁵⁹ Guterres, Twitter (01:45 a.m. WIB, November 29th, 2018), <https://perma.cc/ZC5X-B993>. See: *ibid*, Paris Agreement, e.g.: in general art. 9.

Agreement Work Programme.⁶⁰ He also posted several tweets during the COP 24 calling on “world leaders”⁶¹, “leaders of this generation”⁶², and “everyone at #COP24”⁶³ to address climate change. In the topics of “young people” and “civil society”, he asked them to monitor leaders as they implement their efforts to combat climate change.⁶⁴ He sent a climate appreciation tweet to “young people”.⁶⁵ He also implicitly posted a tweet related to future generations.⁶⁶

Before, throughout, and after the COP 25 (December 2nd-15th, 2019 in Madrid, Spain⁶⁷), Guterres sent climate tweets to “leaders of all countries”⁶⁸ and more generally to “countries”⁶⁹, “the international community”⁷⁰, and the public in general⁷¹ in regards to strengthening their climate actions. Before the COP 25, Guterres lauded and placed his hopes on climate actions of “youth climate activists”.⁷² Throughout and shortly after the COP 25, Guterres tweeted about the world’s “carbon neutrality in 2050”⁷³, the impact of the climate crisis⁷⁴, the responsibility of the G20 and the “biggest emitters” in regards to climate change⁷⁵,

⁶⁰ Guterres, Twitter (04:06 a.m. WIB, December 16th, 2018), <https://perma.cc/6KTA-5N2M>. See in general: *ibid*, Paris Agreement.

⁶¹ (1) Guterres, Twitter (11:27 p.m. WIB, December 2nd, 2018), <https://perma.cc/Q7GX-M7BY>; and (2) Guterres, Twitter (04:39 p.m. WIB, December 3rd, 2018), <https://perma.cc/4K7Z-4K3Y>. See in general: *ibid*, Paris Agreement.

⁶² Guterres, Twitter (06:12 p.m. WIB, December 3rd, 2018), <https://perma.cc/2B24-RY7M>. See in general: *ibid*, Paris Agreement.

⁶³ Guterres, Twitter (07:36 p.m. WIB, December 4th, 2018), <https://perma.cc/VH8C-W66T>. See in general: *ibid*, Paris Agreement.

⁶⁴ Guterres, Twitter (10:10 p.m. WIB, December 14th, 2018), <https://perma.cc/8DV9-VHET>. See in general: *ibid*, Paris Agreement, see also: art. 16 para. 8.

⁶⁵ Guterres, Twitter (08:11 p.m. WIB, December 3rd, 2018), <https://perma.cc/MER8-7CKQ>. See: *ibid*, Paris Agreement, see also: art. 16 para. 8.

⁶⁶ Guterres, Twitter (05:04 a.m. WIB, 13 December 13th, 2018), <https://perma.cc/VD7F-2MD4>. See: *ibid*, Paris Agreement, e.g.: preamble para. 11.

⁶⁷ (1) “UN Climate Change Conference - December 2019”, UNFCCC, accessed January 3rd, 2023, <https://perma.cc/68HD-7P87>; (2) “An Important Opportunity Lost as COP25 Ends in Compromise, but Guterres Declares ‘We Must Not Give Up’”, United Nations, posted December 15th, 2019, <https://perma.cc/APH8-5QKC>; (3) UNFCCC, Twitter (02:34 p.m. WIB, December 2nd, 2019), <https://perma.cc/8XCR-V9DR>; and (4) UNFCCC, Twitter (07:34 p.m. WIB, December 15th, 2019), <https://perma.cc/PXG2-YRBD>.

⁶⁸ Guterres, Twitter (06:49 p.m. WIB, December 1st, 2019), <https://perma.cc/DTJ7-BL5S>. See in general: Paris Agreement (n. 47).

⁶⁹ Guterres, Twitter (01:00 p.m. WIB, December 13th, 2019), <https://perma.cc/TH9R-47LB>. See in general: *ibid*, Paris Agreement.

⁷⁰ This tweet was sent during or after the closing ceremony, see: (1) Guterres, Twitter (08:07 p.m. WIB, December 15th, 2019), <https://perma.cc/26KR-696C>; and (2) UNFCCC, Twitter (07:34 p.m. WIB, December 15th, 2019), (n. 67). See: *ibid*, Paris Agreement, e.g.: art. 2 para. 1 (b)-(c) and in general: art. 7 and art. 9.

⁷¹ (1) Guterres, Twitter (09:42 p.m. WIB, November 28th, 2019), <https://perma.cc/J7KR-9TZM>; and (2) Guterres, Twitter (05:33 p.m. WIB, December 2nd, 2019), <https://perma.cc/5AAK-PSDL>. See in general: *ibid*, Paris Agreement and see also: preamble paras. 9-10.

⁷² Guterres, Twitter (12:13 a.m. WIB, December 2nd, 2019), <https://perma.cc/VZ4Z-2927>. See in general: *ibid*, Paris Agreement, see also: art. 16 para. 8.

⁷³ This tweet was sent during or after the closing ceremony, see: (1) Guterres, Twitter (08:08 p.m. WIB, December 15th, 2019), <https://perma.cc/R73N-23DX>; and (2) UNFCCC, Twitter (07:34 p.m. WIB, December 15th, 2019), (n. 67). See in general: *ibid*, Paris Agreement, see also: art. 2 para. 1 (a).

⁷⁴ Guterres, Twitter (01:21 a.m. WIB, December 5th, 2019), <https://perma.cc/F857-L2FE>. See in general: *ibid*, Paris Agreement, see also: preamble paras. 5 and 11, art. 7 paras. 2, 5-6, and 9, and art. 9 para. 4.

⁷⁵ (1) Guterres, Twitter (06:01 p.m. WIB, December 2nd, 2019), <https://perma.cc/LAD4-8QBX>; and (2) Guterres, Twitter (11:46 p.m. WIB, December 11th, 2019), <https://perma.cc/9CND-C5FR>. See in general: *ibid*, Paris Agreement, see also: art. 4 para. 4, in general art. 9, art. 11 para. 3, and art. 13 para. 9.

the abandonment of fossil fuels⁷⁶, the shift to a green economy⁷⁷, and the need to address climate change for “future generations”⁷⁸. Guterres also posted in support of the EU’s plan for “carbon neutrality by 2050”⁷⁹. Furthermore, he expressed his concern about climate justice⁸⁰ for the Alliance of Small Island States.⁸¹ Among these tweets, Guterres was particularly strong when criticizing the fossil fuel industry, saying: “We urgently need more businesses to back away from fossil fuels”.⁸²

This research found that, out of all the COPs, the COP 26 (October 31st-November 13th, 2021 in Glasgow, the UK⁸³) had the highest concentration of climate-related tweets.⁸⁴ These tweets were posted before, throughout, and after the COP 26.⁸⁵ The tweets before the commencement of the COP 26 began with Guterres’ approval for the postponement of the COP 26 in 2020 due to COVID-19.⁸⁶ He then posted climate tweets aimed at “world leaders”⁸⁷, “leaders”⁸⁸, “all countries”⁸⁹, “all nations”⁹⁰, “governments”⁹¹, and the

⁷⁶ (1) Guterres, Twitter (06:14 p.m. WIB, December 2nd, 2019), <https://perma.cc/VUD3-FG2S>; and (2) Guterres, Twitter (07:32 p.m. WIB, December 11th, 2019), <https://perma.cc/H2SU-EH3P>. See in general: *ibid*, Paris Agreement, see also: preamble para. 10.

⁷⁷ (1) Guterres, Twitter (02:28 a.m. WIB, December 4th, 2019), <https://perma.cc/TPQ3-8ZRZ>; and (2) Guterres, Twitter (09:16 p.m. WIB, December 12th, 2019), <https://perma.cc/E77Z-MWYW>. See: *ibid*, Paris Agreement, e.g.: preamble para. 10.

⁷⁸ Guterres, Twitter (05:00 a.m. WIB, December 13th, 2019), <https://perma.cc/4DPM-VWT3>. See: *ibid*, Paris Agreement, e.g.: preamble para. 11.

⁷⁹ Guterres, Twitter (03:44 p.m. WIB, December 13th, 2019), <https://perma.cc/C7JH-8AN2>. See in general: *ibid*, Paris Agreement, see also: art. 4 paras. 16 and 18.

⁸⁰ For an explanation of “climate justice” see: Rob Macquarie (Reviewed by: Catherine Higham and Sabrina Muller), “What is Meant by ‘Climate Justice’?”, Grantham Research Institute on Climate Change and the Environment, posted June 7th, 2022, <https://perma.cc/T2QL-S55C>.

⁸¹ Guterres, Twitter (01:33 a.m. WIB, December 13th, 2019), <https://perma.cc/VC2W-H7F9>. See in general: *ibid*, Paris Agreement, see also: preamble para. 13, and art. 9 paras. 4 and 9.

⁸² Guterres, Twitter (07:32 p.m. WIB, December 11th, 2019), (n. 76). See also: Handa S. Abidin, “Menko Perekonomian, Krisis Iklim, dan Peluang Climate Tech Unicorns”, *Industry.co.id*, posted June 28th, 2022, <https://perma.cc/EW9T-QFLX>.

⁸³ (1) “Glasgow Climate Change Conference – October-November 2021”, UNFCCC, accessed January 4th, 2023, <https://perma.cc/HT34-44AF>; (2) “COP26 Closes with ‘Compromise’ Deal on Climate, but It’s Not Enough, Says UN Chief”, United Nations, posted November 13th, 2021, <https://perma.cc/R9AA-XJQN>; (3) UNFCCC, Twitter (06:12 p.m. WIB, October 31st, 2021), <https://perma.cc/G4ZP-BTGH>; and (4) UNFCCC, Twitter (01:55 a.m. WIB, November 14th, 2021), <https://perma.cc/8G5R-JV5G>.

⁸⁴ See in general: footnote 5.

⁸⁵ See in general: *ibid*.

⁸⁶ Guterres, Twitter (12:22 a.m. WIB, April 3rd, 2020), <https://perma.cc/WE5C-VKBB>.

⁸⁷ Guterres, Twitter (03:12 a.m. WIB, October 29th, 2021), <https://perma.cc/ZU6Q-6JA8>. See in general: Paris Agreement (n. 47).

⁸⁸ (1) Guterres, Twitter (10:56 p.m. WIB, October 26th, 2021), <https://perma.cc/T3AS-2HSW>; and (2) Guterres, Twitter (05:27 a.m. WIB, October 30th, 2021), <https://perma.cc/8TMC-CA88>. See in general: *ibid*, Paris Agreement, see also: art. 2 para. 1 (a).

⁸⁹ (1) Guterres, Twitter (05:45 a.m. WIB, February 9th, 2021), <https://perma.cc/QB89-EPKF>; (2) Guterres, Twitter (10:35 a.m. WIB, July 9th, 2021), <https://perma.cc/QQ33-ECT2>; (3) Guterres, Twitter (09:27 p.m. WIB, July 23rd, 2021), <https://perma.cc/4V8S-D6MB>; (4) Guterres, Twitter (10:00 p.m. WIB, September 16th, 2021), <https://perma.cc/U56X-R358>; and (5) Guterres, Twitter (03:31 p.m. WIB, September 22nd, 2021), <https://perma.cc/6FW8-H22E>. See in general: *ibid*, Paris Agreement, see also: art. 2 para. 1, art. 7, and art. 9.

⁹⁰ Guterres, Twitter (05:30 a.m. WIB, October 1st, 2021), <https://perma.cc/GH63-NGQ7>. See in general: *ibid*, Paris Agreement.

⁹¹ Guterres, Twitter (06:14 a.m. WIB, October 28th, 2021), <https://perma.cc/JKS8-WHN2>. See in general: *ibid*, Paris Agreement.

public in general⁹². Guterres also restates the United Nations' commitment to climate change.⁹³ He also tweeted about the Paris Agreement's importance, and the need to "restore the spirit of the #ParisAgreement".⁹⁴ In his tweets, Guterres emphasized the significance of a partnership effort between the United States and China to ensure the fulfilment of the Paris Agreement.⁹⁵ He also highlighted that the G20, as the world's greatest carbon producer, must uphold the "goal of 1.5 degrees", and called them to the COP 26 to raise their climate commitment.⁹⁶ Guterres and the UK's Prime Minister requested cooperation from other parties on the outcome of the COP 26,⁹⁷ and Guterres also made a request for countries in Latin America and the Caribbean to back the COP 26.⁹⁸ Furthermore, he expressed his endorsement of the United Arab Emirates' pledge to achieve "net zero emissions by 2050".⁹⁹ Guterres repeatedly asked "young people" to continue monitoring the COP 26.¹⁰⁰ Guterres urged developed countries to aid developing countries in their green transformation to avoid fossil fuels.¹⁰¹ Guterres stressed the significance of COP 26's outcome in relation to "the future of our children and grandchildren".¹⁰²

The climate tweets related to the COP 26 from Guterres during and after the COP 26 included general climate tweets on the importance of climate actions addressed to "leaders"¹⁰³, "all countries"¹⁰⁴,

⁹² (1) Guterres, Twitter (04:48 p.m. WIB, October 11th, 2021), <https://perma.cc/6BTE-TK2A>; (2) Guterres, Twitter (06:05 a.m. WIB, October 27th, 2021), <https://perma.cc/8DWW-MXV5>; (3) Guterres, Twitter (03:46 p.m. WIB, October 30th, 2021), <https://perma.cc/Q7W7-PYXL>; and (4) Guterres, Twitter (03:46 p.m. WIB, October 30th, 2021), <https://perma.cc/4UD7-ETQX>. See in general: *ibid*, Paris Agreement.

⁹³ (1) Guterres, Twitter (01:03 a.m. WIB, November 13th, 2020), <https://perma.cc/W974-BRYG>; and (2) Guterres, Twitter (01:54 a.m. WIB, November 13th, 2020), <https://perma.cc/SX9G-CPGP>. See in general: *ibid*, Paris Agreement.

⁹⁴ (1) Guterres, Twitter (06:30 a.m. WIB, February 20th, 2021), <https://perma.cc/2D2L-RA33>; and (2) Guterres, Twitter (03:53 p.m. WIB, October 3rd, 2021), <https://perma.cc/7NF5-LTXD>. See in general: *ibid*, Paris Agreement.

⁹⁵ Guterres, Twitter (04:45 a.m. WIB, April 20th, 2021), <https://perma.cc/3A4N-NLZU>. See also: Guterres, Twitter (01:46 a.m. WIB, November 11th, 2021), <https://perma.cc/7VP4-29G9>. See in general: *ibid*, Paris Agreement, see also: art. 2.

⁹⁶ (1) Guterres, Twitter (10:05 p.m. WIB, September 3rd, 2020), <https://perma.cc/HY39-YAW3>; (2) Guterres, Twitter (07:45 p.m. WIB, October 31st, 2021), <https://perma.cc/E46Z-T83Z>; and (3) Guterres, Twitter (09:54 p.m. WIB, October 31st, 2021), <https://perma.cc/Y2T7-RJHL>. See in general: *ibid*, Paris Agreement, see also: art. 2 para. 1, art. 4 para. 4, in general art. 9, art. 11 para. 3, and art. 13 para. 9.

⁹⁷ Guterres, Twitter (07:24 a.m. WIB, September 21st, 2021), <https://perma.cc/UCB2-C4T6>. See in general: *ibid*, Paris Agreement.

⁹⁸ Guterres, Twitter (04:59 a.m. WIB, September 9th, 2021), <https://perma.cc/D5X5-SSKD>. See in general: *ibid*, Paris Agreement, see also: art. 2 para. 1 and art. 4 para. 4.

⁹⁹ Guterres, Twitter (05:35 a.m. WIB, October 8th, 2021), <https://perma.cc/MTZ7-CWHC>. See in general: *ibid*, Paris Agreement, see also: art. 4 para. 4.

¹⁰⁰ (1) Guterres, Twitter (08:30 a.m. WIB, September 24th, 2021), <https://perma.cc/WAS2-N49C>; (2) Guterres, Twitter (09:01 a.m. WIB, October 1st, 2021), <https://perma.cc/8ZG7-VUFH>; and (3) Guterres, Twitter (12:01 a.m. WIB, October 31st, 2021), <https://perma.cc/82DQ-PCLN>. See in general: *ibid*, Paris Agreement, see also: preamble para. 13 and art. 16 para. 8.

¹⁰¹ Guterres, Twitter (03:20 a.m. WIB, January 12th, 2021), <https://perma.cc/X4EV-WPZV>. See in general: *ibid*, Paris Agreement, see also: preamble para. 10 and in general art. 9.

¹⁰² (1) Guterres, Twitter (01:57 a.m. WIB, December 13th, 2020), <https://perma.cc/AR8L-H3FN>; and (2) Guterres, Twitter (05:25 a.m. WIB, February 8th, 2021), <https://perma.cc/RF5R-METW>. See: *ibid*, Paris Agreement, e.g.: preamble para. 11.

¹⁰³ Guterres, Twitter (10:45 a.m. WIB, November 1st, 2021), <https://perma.cc/R2F2-Z95H>. See in general: *ibid*, Paris Agreement.

¹⁰⁴ (1) Guterres, Twitter (08:02 p.m. WIB, November 1st, 2021), <https://perma.cc/LFG8-TZNT>; and (2) Guterres, Twitter (05:35 p.m. WIB, November 11st, 2021), <https://perma.cc/YZH9-Z4XU>. See in general: *ibid*, Paris Agreement, see also: art. 2 para. 1.

“negotiators”¹⁰⁵, “#COP26”¹⁰⁶, and the public¹⁰⁷. Guterres offered a response to the climate consequences in Madagascar.¹⁰⁸ Guterres reminded companies of their role in responding to climate change.¹⁰⁹ During and after the COP 26, Guterres emphasized his support of overseeing climate action by “young people”¹¹⁰, “young climate activists”¹¹¹, “women leaders”¹¹², and “indigenous communities”¹¹³. Guterres expressed his sympathy with the hundreds of murdered environmental activists.¹¹⁴ Other topics that were of concern to Guterres during and after the COP 26 included climate finance where developed countries need to assist developing countries¹¹⁵, early warning systems¹¹⁶, tsunami climate resilience¹¹⁷, stopping dependence on fossil fuels¹¹⁸, and the utilization of environmentally friendly energy¹¹⁹. Guterres appreciated the declarations from numerous countries to protect forests.¹²⁰ Among Guterres’ tweets regarding the COP 26, he reaffirmed his opposition to the use of fossil fuels with a strong tone: “Our addiction to fossil fuels is pushing humanity to the brink [...] We are digging our own graves”.¹²¹

¹⁰⁵ Guterres, Twitter (08:57 a.m. WIB, November 6th, 2021), <https://perma.cc/FTH6-NDGN>. See in general: *ibid*, Paris Agreement, see also: preamble para. 13.

¹⁰⁶ Guterres, Twitter (06:24 p.m. WIB, November 10th, 2021), <https://perma.cc/4KLW-5BY8>. See in general: *ibid*, Paris Agreement, see also: preamble para. 10.

¹⁰⁷ (1) Guterres, Twitter (07:07 a.m. WIB, November 1st, 2021), <https://perma.cc/D67W-FYKM>; (2) Guterres, Twitter (11:37 p.m. WIB, November 11th, 2021), <https://perma.cc/FLJ7-CQES>; (3) Guterres, Twitter (05:30 a.m. WIB, November 12th, 2021), (n. 28); (4) Guterres, Twitter (03:13 a.m. WIB, November 14th, 2021), <https://perma.cc/3FVL-9RMT>; (5) Guterres, Twitter (09:43 p.m. WIB, November 1st, 2021), <https://perma.cc/S6YR-78MT>; and (6) Guterres, Twitter (06:09 a.m. WIB, November 8th, 2021), <https://perma.cc/A5G2-ZET6>. See in general: *ibid*, Paris Agreement.

¹⁰⁸ Guterres, Twitter (10:16 p.m. WIB, November 7th, 2021), <https://perma.cc/4BAB-WQBU>. See: “Least Developed Country Category: Madagascar Profile”, United Nations, accessed March 5th, 2023, <https://perma.cc/H448-6C57>. See also: *ibid*, Paris Agreement, e.g.: art. 4 para. 6, art. 9 paras. 4 and 9, and art. 11 para. 1.

¹⁰⁹ Guterres, Twitter (10:12 p.m. WIB, November 10th, 2021), <https://perma.cc/QZZ3-5PF6>. See in general: *ibid*, Paris Agreement, see also: preamble para. 10.

¹¹⁰ (1) Guterres, Twitter (10:02 a.m. WIB, November 2nd, 2021), <https://perma.cc/V2EH-4EBY>; (2) Guterres, Twitter (06:31 a.m. WIB, November 14th, 2021), <https://perma.cc/M725-ASLF>; (3) Guterres, Twitter (06:53 a.m. WIB, November 3rd, 2021), <https://perma.cc/FTN4-58K5>; and (4) Guterres, Twitter (06:27 a.m. WIB, November 11th, 2021), <https://perma.cc/DW7U-FRPT>. See in general: *ibid*, Paris Agreement, see also: art. 16 para. 8.

¹¹¹ Guterres, Twitter (03:13 a.m. WIB, 3 November 3rd, 2021), <https://perma.cc/3ZLC-TUQH>. See in general: *ibid*, Paris Agreement, see also: art. 16 para. 8.

¹¹² Guterres, Twitter (06:31 a.m. WIB, 14 November 14th, 2021) (n. 110). See in general: *ibid*, Paris Agreement, see also: art. 16 para. 8.

¹¹³ Guterres, Twitter (10:02 a.m. WIB, November 2nd, 2021) (n. 110). See in general: *ibid*, Paris Agreement, see also: art. 16 para. 8.

¹¹⁴ Guterres, Twitter (03:33 p.m. WIB, November 10th, 2021), <https://perma.cc/VC6T-BQKZ>. See: *ibid*, Paris Agreement, preamble para. 11.

¹¹⁵ (1) Guterres, Twitter (11:32 p.m. WIB, November 1st, 2021), <https://perma.cc/K634-Y8CS>; and (2) Guterres, Twitter (11:12 p.m. WIB, November 4th, 2021), <https://perma.cc/7PYE-XWFA>. See: *ibid*, Paris Agreement, in general art. 9.

¹¹⁶ Guterres, Twitter (02:02 p.m. WIB, November 2nd, 2021), <https://perma.cc/T37P-HAW8>. See: *ibid*, Paris Agreement, e.g., in general arts. 7-9.

¹¹⁷ Guterres, Twitter (07:07 a.m. WIB, November 5th, 2021), <https://perma.cc/E4JP-BY7B>. See: *ibid*, Paris Agreement, e.g.: in general arts. 7-8.

¹¹⁸ (1) Guterres, Twitter (03:15 a.m. WIB, November 2nd, 2021), <https://perma.cc/44QF-MFAK>; and (2) Guterres, Twitter (09:22 p.m. WIB, November 14th, 2021), <https://perma.cc/QW63-88TZ>. See in general: *ibid*, Paris Agreement, see also: preamble para. 10 and in general art. 9.

¹¹⁹ Guterres, Twitter (02:08 a.m. WIB, November 7th, 2021), <https://perma.cc/F8Z9-WTQG>. See in general: *ibid*, Paris Agreement, see also: preamble para. 10.

¹²⁰ Guterres, Twitter (05:08 p.m. WIB, November 2nd, 2021), <https://perma.cc/NEX4-B6GY>. See: *ibid*, Paris Agreement, e.g: preamble para. 12 and art. 5.

¹²¹ Guterres, Twitter (03:15 a.m. WIB, November 2nd, 2021) (n. 118). See: footnote 82.

In 2022 (6-20 November 6th-20th, 2022), the COP 27 was held in Egypt (Sharm El Sheikh).¹²² Prior to its opening, Guterres addressed his general climate tweets to “world leaders”¹²³, “leaders”¹²⁴, “governments”¹²⁵, “#COP27”¹²⁶, and the public¹²⁷. Furthermore, he also discussed loss and damage¹²⁸, food shortages caused by the effects of climate change¹²⁹, and early warning systems to manage the impact of climate change¹³⁰. During and after the COP 27, Guterres sent general climate tweets addressing climate change to “global leaders”¹³¹, “world leaders”¹³², “leaders”¹³³, “representatives”¹³⁴, “negotiators”¹³⁵, “#COP27”¹³⁶, and the public¹³⁷. During the COP 27, Guterres tweeted his support for “young people”¹³⁸,

¹²² (1) “COP27”, UNFCCC, accessed January 5th, 2023, <https://perma.cc/5S6J-ZE9B>; (2) “COP27 Closes with Deal on Loss and Damage: ‘A Step Towards Justice,’ Says UN Chief”, United Nations, posted November 20th, 2022, <https://perma.cc/4ZYX-XHRP>; (3) UNFCCC, Twitter (04:37 p.m. WIB, November 6th, 2022), <https://perma.cc/K96W-CRCN>; and (4) UNFCCC, Twitter (09:17 a.m. WIB, November 20th, 2022), <https://perma.cc/SG5W-BKJA>.

¹²³ Guterres, Twitter (08:30 a.m. WIB, September 22nd, 2022), <https://perma.cc/A7LY-JVKY>. See in general: *ibid*, Paris Agreement (n. 47), see also: art. 2 para. 1 and arts. 7-9.

¹²⁴ (1) Guterres, Twitter (07:01 p.m. WIB, September 29th, 2022), <https://perma.cc/C8JW-MNP7>; (2) Guterres, Twitter (11:20 p.m. WIB, October 2nd, 2022), <https://perma.cc/2X7V-YQ35>; (3) Guterres, Twitter (08:54 a.m. WIB, October 4th, 2022), <https://perma.cc/DLB2-MG6L>; and (4) Guterres, Twitter (01:34 a.m. WIB, November 5th, 2022), <https://perma.cc/Y2JC-D8K2>. See: *ibid*, Paris Agreement.

¹²⁵ Guterres, Twitter (03:31 a.m. WIB, October 4th, 2022), <https://perma.cc/QUX8-6JRE>. See: *ibid*, Paris Agreement, art. 8.

¹²⁶ Guterres, Twitter (08:04 a.m. WIB, October 26th, 2022), <https://perma.cc/994W-NCMS>. See in general: *ibid*, Paris Agreement.

¹²⁷ Guterres, Twitter (10:38 a.m. WIB, November 4th, 2022), <https://perma.cc/3VGD-WZVN>. See in general: *ibid*, Paris Agreement.

¹²⁸ Guterres, Twitter (07:55 p.m. WIB, November 4th, 2022), <https://perma.cc/2SCC-MMA9>. See also: Guterres, Twitter (04:54 p.m. WIB, November 4th, 2022), <https://perma.cc/87DG-8TL4>. See: *ibid*, Paris Agreement, e.g.: art. 2 para. 1 and arts. 7-9.

¹²⁹ Guterres, Twitter (06:35 p.m. WIB, November 5th, 2022), <https://perma.cc/V7SQ-EDLC>. See: *ibid*, Paris Agreement, e.g.: preamble para. 9.

¹³⁰ Guterres, Twitter (11:00 p.m. WIB, October 13th, 2022), <https://perma.cc/36AG-VLLK>. See: *ibid*, Paris Agreement, e.g.: art. 7 para. 7 (c), art. 8 para. 4 (a), and in general art. 9.

¹³¹ Guterres, Twitter (06:04 p.m. WIB, November 7th, 2022), <https://perma.cc/3PQB-5ASJ>. See in general: *ibid*, Paris Agreement.

¹³² Guterres, Twitter (05:33 a.m. WIB, November 9th, 2022), <https://perma.cc/XF84-942E>. See: *ibid*, Paris Agreement, e.g.: preamble paras. 5 and 11, art. 6 para. 6, art. 7 paras. 2, 5-6, 9 (c), art. 9 para. 4, and art. 11 para. 1.

¹³³ Guterres, Twitter (08:25 p.m. WIB, November 15th, 2022), <https://perma.cc/R55H-QXVF>. See: *ibid*, Paris Agreement, e.g.: art. 2 para. 1 (a).

¹³⁴ Guterres, Twitter (07:01 p.m. WIB, November 18th, 2022), <https://perma.cc/9J96-5GTH>. See in general: *ibid*, Paris Agreement.

¹³⁵ Guterres, Twitter (10:45 p.m. WIB, November 17th, 2022), <https://perma.cc/JZ72-CCRC>. See in general: *ibid*, Paris Agreement.

¹³⁶ Guterres, Twitter (12:53 a.m. WIB, November 18th, 2022) <https://perma.cc/7XEL-V2SA>. See in general: *ibid*, Paris Agreement.

¹³⁷ (1) Guterres, Twitter (03:30 a.m. WIB, November 8th, 2022), <https://perma.cc/M2YN-84SZ>; (2) Guterres, Twitter (05:45 a.m. WIB, November 8th, 2022), <https://perma.cc/3AB4-EJXB>; and (3) Guterres, Twitter (01:05 a.m. WIB, November 9th, 2022), <https://perma.cc/BWE4-Z2BW>. See in general: *ibid*, Paris Agreement.

¹³⁸ (1) Guterres, Twitter (07:35 p.m. WIB, November 9th, 2022), <https://perma.cc/LUB6-7XFW>; and (2) Guterres, Twitter (03:14 a.m. WIB, November 10th, 2022) <https://perma.cc/E36S-SG5G>. See in general: *ibid*, Paris Agreement, see also: art. 16 para. 8.

“youth”¹³⁹, and various other groups¹⁴⁰. Furthermore, other subjects covered in Guterres’ tweets during and after the COP 27 included developed and developing countries’ collaboration with respect to the Climate Solidarity Pact¹⁴¹, aid to Africa¹⁴², concerns for Kilimanjaro’s future as a result of climate change¹⁴³, fossil fuel issues¹⁴⁴, clean water supply capacity¹⁴⁵, the increasing rate of sea level¹⁴⁶, loss and damage funds¹⁴⁷, early warning system to assist the vulnerable¹⁴⁸, and net zero integrity¹⁴⁹. In the context of the COP 27, Guterres, again, posted climate tweets on fossil fuels with a strong tone—for example: “Fossil fuel addiction is hijacking humanity. Renewables are the exit ramp from the climate hell highway”.¹⁵⁰

Outside the context of the COP Guterres sent tweets to the public¹⁵¹, “all countries”¹⁵², “countries & businesses”¹⁵³, and “leading economies”¹⁵⁴ voicing general support for the Paris Agreement. Guterres

¹³⁹ Guterres, Twitter (12:40 p.m. WIB, November 20th, 2022), <https://perma.cc/L55M-RNGQ>. See also: Guterres, Twitter (10:44 p.m. WIB, November 9th, 2022), <https://perma.cc/Z4MP-YSGY>. See in general: *ibid*, Paris Agreement, see also: art. 16 para. 8.

¹⁴⁰ (1) *Ibid*, Guterres, Twitter (12:40 p.m. WIB, November 20th, 2022); and (2) Guterres, Twitter (09:32 a.m. WIB, November 8th, 2022), <https://perma.cc/EJ4H-V32Q>. See in general: *ibid*, Paris Agreement, e.g.: preamble para. 11 and art. 16 para. 8.

¹⁴¹ Guterres, Twitter (01:20 a.m. WIB, 8 November 8th, 2022), <https://perma.cc/BZ4D-T8HQ>. See in general: *ibid*, Paris Agreement.

¹⁴² Guterres, Twitter (05:17 p.m. WIB, November 8th, 2022), <https://perma.cc/Q874-PRF3>. See: *ibid*, Paris Agreement, e.g.: preamble paras. 5 and 11, art. 6 para. 6, art. 7 paras. 2, 5-6, 9 (c), art. 9 para. 4, and art. 11 para. 1.

¹⁴³ Guterres, Twitter (06:00 p.m. WIB, November 12th, 2022), <https://perma.cc/W9C7-8KRR>. See in general: *ibid*, Paris Agreement, see also: preamble para. 13.

¹⁴⁴ Guterres, Twitter (09:01 p.m. WIB, November 18th, 2022), <https://perma.cc/ZU8C-8RZJ>. See in general: *ibid*, Paris Agreement, see also: preamble para. 10.

¹⁴⁵ Guterres, Twitter (08:04 a.m. WIB, November 7th, 2022), <https://perma.cc/7D5G-VTLQ>. See in general: *ibid*, Paris Agreement.

¹⁴⁶ Guterres, Twitter (07:09 p.m. WIB, November 6th, 2022), <https://perma.cc/8MQR-PPYK>. See in general: *ibid*, Paris Agreement.

¹⁴⁷ Guterres, Twitter (11:12 a.m. WIB, November 20th, 2022), <https://perma.cc/84K5-ZPPK>. See also: Guterres, Twitter (08:05 p.m. WIB, November 7th, 2022), <https://perma.cc/G25U-PWVS>. See: *ibid*, Paris Agreement, e.g.: art. 8 and preamble para. 13.

¹⁴⁸ Guterres, Twitter (10:37 p.m. WIB, November 7th, 2022), <https://perma.cc/A3RV-M2JW>. See: *ibid*, Paris Agreement, e.g.: art. 7 para. 7 (c), art. 8 para. 4 (a), and preamble paras. 5 and 11.

¹⁴⁹ (1) Guterres, Twitter (09:02 p.m. WIB, November 8th, 2022), <https://perma.cc/947P-ZYNS>; (2) Guterres, Twitter (09:01 a.m. WIB, November 9th, 2022), <https://perma.cc/9G3U-YFZP>; and (3) Guterres, Twitter (01:00 p.m. WIB, November 8th, 2022), <https://perma.cc/2JLX-YYNL>. See: *ibid*, Paris Agreement, e.g.: preamble para. 10.

¹⁵⁰ Guterres, Twitter (09:01 p.m. WIB, November 18th, 2022) (n. 144). See footnotes: 82 and 121.

¹⁵¹ E.g.: (1) Guterres, Twitter (06:40 p.m. WIB, November 14th, 2017), <https://perma.cc/Z73Q-N6H9>; (2) Guterres, Twitter (11:40 p.m. WIB, June 1st, 2017), <https://perma.cc/U3XB-CNM5>; (3) Guterres, Twitter (10:32 p.m. WIB, September 26th, 2018), <https://perma.cc/HL4U-W3NV>; (4) Guterres, Twitter (04:36 a.m. WIB, August 8th, 2021), <https://perma.cc/P7FD-E2SV>; (5) Guterres, Twitter (03:08 a.m. WIB, September 17th, 2021), <https://perma.cc/4FQ8-TYYYS>; (6) Guterres, Twitter (05:03 p.m. WIB, September 18th, 2021), <https://perma.cc/6DE9-EQG>; (7) Guterres, Twitter (02:15 p.m. WIB, February 20th, 2021), <https://perma.cc/34T9-QE5U>; (8) Guterres, Twitter (11:33 a.m. WIB, November 11th, 2020), <https://perma.cc/K2CV-68MQ>; and (9) Guterres, Twitter (05:10 p.m. WIB, December 12th, 2020), <https://perma.cc/QA4L-H6HG>. See in general: *ibid*, Paris Agreement, see also: art. 2 para. 1 (a) and preamble para. 11.

¹⁵² Guterres, Twitter (07:12 a.m. WIB, January 9th, 2022), <https://perma.cc/Q7Y9-TDE2>. See in general: *ibid*, Paris Agreement, see also: art. 2 para. 1 (a).

¹⁵³ Guterres, Twitter (06:11 p.m. WIB, June 2nd, 2017), <https://perma.cc/7Q4Z-UQ8Q>. See in general: *ibid*, Paris Agreement.

¹⁵⁴ Guterres, Twitter (03:35 a.m. WIB, September 18th, 2021), <https://perma.cc/7TU5-FC2W>. See in general: *ibid*, Paris Agreement.

addressed the G7 to implement the Paris Agreement¹⁵⁵ including in regard to climate funding¹⁵⁶; and the G20 to support the Paris Agreement¹⁵⁷ including sustainable development issues¹⁵⁸. Guterres tweeted support for the United States which rejoined the Paris Agreement as a State Party¹⁵⁹, for Russia and Turkey which joined the Paris Agreement as States Parties¹⁶⁰, and for India for its backing to the Paris Agreement¹⁶¹. In addition, the topics discussed by Guterres concerning the Paris Agreement included issues such as green business¹⁶², the lack of support from the air and sea transportation industry in general in the climate agenda¹⁶³, the expense of adaptation in emerging nations¹⁶⁴, nature-based solutions as an answer¹⁶⁵, raising the target of Nationally Determined Contributions¹⁶⁶, stopping the use of coal¹⁶⁷, net zero commitments¹⁶⁸, climate finance¹⁶⁹, and adaptation¹⁷⁰.

III. Conclusion

In his tweets on climate change, Guterres has addressed a wide range of topics relating to this subject. It is possible to establish a direct or indirect connection between Guterres' climate tweets and the Paris Agreement. In his climate tweets, among other things, Guterres tried to expedite the application of the Paris Agreement by its Parties. Furthermore, the tweets also function as a reminder to Parties to the Paris Agreement to fulfil the treaty. Guterres has never posted a tweet that opposes the Paris Agreement. All of Guterres' climate-related tweets support and promote the Paris Agreement either directly or indirectly. The climate tweets posted by Guterres are available to the general public and may be seen by anyone who has

¹⁵⁵ Guterres, Twitter (08:53 p.m. WIB, June 10th, 2021), <https://perma.cc/KZ7P-MPTB>. See in general: *ibid*, Paris Agreement.

¹⁵⁶ (1) Guterres, Twitter (02:05 a.m. WIB, June 14th, 2021), <https://perma.cc/7VZC-LL7N>; and (2) Guterres, Twitter (01:59 p.m. WIB, June 21st, 2021), <https://perma.cc/53LK-EJ2R>. See: *ibid*, Paris Agreement, e.g., in general: art. 9.

¹⁵⁷ Guterres, Twitter (10:24 p.m. WIB, July 25th, 2021), <https://perma.cc/44K6-WB2G>. See in general: *ibid*, Paris Agreement. See: *ibid*, Paris Agreement, e.g.: art. 2 para. 1 (a).

¹⁵⁸ (1) Guterres, Twitter (01:04 a.m. WIB, December 2nd, 2018), <https://perma.cc/5HZA-UV5V>; and (2) Guterres, Twitter (02:30 a.m. WIB, December 2nd, 2018), <https://perma.cc/EEB3-THR4>. See: *ibid*, Paris Agreement, e.g.: preamble para. 8, art. 2 para. 1, art. 4, art. 6 paras. 1-2 and 4 (a), paras. 8-9, art. 7 para. 1, art. 8 para. 1, art. 10 para. 5.

¹⁵⁹ Guterres, Twitter (04:35 a.m. WIB, February 20th, 2021), <https://perma.cc/2SY4-QL9M>. See also: Guterres, Twitter (06:14 a.m. WIB, January 21st, 2021), <https://perma.cc/EK34-5P8P>. See in general: *ibid*, Paris Agreement, see also: art. 20.

¹⁶⁰ (1) Guterres, Twitter (04:22 a.m. WIB, October 16th, 2019), <https://perma.cc/2HFK-2L82>; and (2) Guterres, Twitter (01:14 a.m. WIB, October 8th, 2021), <https://perma.cc/JF8G-AH9R>. See also: Guterres, Twitter (10:54 p.m. WIB, July 10th, 2019), <https://perma.cc/2VD9-GH3C>. See in general: *ibid*, Paris Agreement, see also: art. 20.

¹⁶¹ Guterres, Twitter (07:00 p.m. WIB, November 30th, 2018), <https://perma.cc/D7M5-MTN2>. See in general: *ibid*, Paris Agreement.

¹⁶² Guterres, Twitter (09:42 a.m. WIB, December 30th, 2017), <https://perma.cc/UQZ5-ERCR>. See: *ibid*, Paris Agreement, e.g.: preamble 10.

¹⁶³ Guterres, Twitter (05:00 a.m. WIB, October 15th, 2021), <https://perma.cc/4MHX-DU3L>. See: *ibid*, Paris Agreement, e.g.: art. 2 para. 1 (a) and preamble para. 10.

¹⁶⁴ Guterres, Twitter (02:47 a.m. WIB, October 21st, 2018), <https://perma.cc/T7BP-MSUK>. See: *ibid*, Paris Agreement, e.g.: in general art. 7.

¹⁶⁵ Guterres, Twitter (05:31 p.m. WIB, December 6th, 2020), <https://perma.cc/GC68-EAU7>. See: *ibid*, Paris Agreement, e.g.: in general art. 5.

¹⁶⁶ Guterres, Twitter (08:27 p.m. WIB, February 26th, 2021), <https://perma.cc/RB43-MW2A>. See: *ibid*, Paris Agreement, e.g., in general: arts. 3-4, 7, 9-11, and 13.

¹⁶⁷ Guterres, Twitter (11:17 a.m. WIB, June 3rd, 2021), <https://perma.cc/HG9G-B3BK>. See: *ibid*, Paris Agreement, e.g.: preamble para. 10.

¹⁶⁸ Guterres, Twitter (11:30 p.m. WIB, December 12th, 2020), <https://perma.cc/28KX-ZKSR>. See also: Guterres, Twitter (07:50 p.m. WIB, December 5th, 2020), <https://perma.cc/MR2G-XCW5>. See in general: *ibid*, Paris Agreement.

¹⁶⁹ *Ibid*, Guterres, Twitter (07:50 p.m. WIB, December 5th, 2020). See in general: *Ibid*, Paris Agreement, e.g.: art. 9.

¹⁷⁰ *Ibid*, Guterres, Twitter (07:50 p.m. WIB, December 5th, 2020). See in general: *ibid*, Paris Agreement, e.g.: in general art. 7.

access to Twitter. It should be noted that Guterres' tweets are directed not only to the Parties to the Paris Agreement, those who are following him on Twitter, and the parties he explicitly addresses, but also to the public in general, especially those who have access to Twitter.

In general, the climate tweets disseminated by Guterres exhibit consistency in expressing support for the Paris Agreement. There are multiple areas in which Guterres might enhance the efficacy of the Paris Agreement by using his climate tweets. For instance, the bold nature of some Guterres climate tweets, as observed in the preceding discussions, acts as a means to overcome the deadlock on an issue but in a less formal manner. Furthermore, it is necessary to raise the level of collaboration with more countries and other stakeholders in order to expand the dissemination of climate tweets. Moreover, there is a need for greater dissemination of achievements related to the successful execution of the Paris Agreement in specific nations and industries.

APPLICATION AND OUTCOME OF DECENTRALIZED MODEL OF SUSTAINABLE LIVING FOR INDIA: WITH REFERENCE TO GANDHIAN MODEL OF RURAL DEVELOPMENT

Dr. Praveen Kumar*

“Village republics can be built only through decentralization of social and political power. In such a system decision-making power will be vested in the Village Panchayat rather than in the State and the National capital.”

-M. K. Gandhi

Abstract

After analyzing the global acceptance and practical applications of United Nations Millennium Development Goals (MDGs) followed by Sustainable Development Goals (SDGs), the author is keen to investigate in to the causes of continuous degradation of environment with increased industrialization and climate change through this paper. The author intends to propound a decentralized model of Sustainable Development designed especially for a country like India where 70% of its population still depends on Agriculture. The author is willing to study the application of Gandhian Model of Rural Development and its application in 21st century; aligning with MDGs and SDGs as narrated by United Nations. Lastly, the author will put forward a viable and decentralized model of sustainable development aiming at eradication of solid waste menace, ground water conservation, improving air quality index across India through this paper.

Keywords: *Sustainable Development, Climate Change, Gandhian Philosophy, Rural Development, Environment Pollution, Water Conservation, Air Quality Index*

I. Introduction

The issue of environmental degradation was realized by the World community for the first time in 1972 and resulted in to acceptance of global resolution to protect human beings from increasing environmental pollutants in the surroundings. The document is also known as Stockholm Declaration. Majority of the countries across the globe were united and agreed to cut down the presence of pollutants in the environment. This treaty was a significant eye opener for the world population in spreading awareness towards environment protection. Nonetheless, it is unimaginable for any species including human beings to survive in a polluted environment, the piece meal actions were taken to cut down the industrial pollutants by most of the countries. Whole World was divided in to three groups and countries were labelled as Developed Countries, Developing Countries & Under-Developed Countries. Continuous rise of the industrial needs was remained unchecked by the legislators of all countries and objectives set under the Declaration were never met. Several debates occurred thereafter at several National & International forums but environmental degradation continued to meet the necessities of human beings to survive.¹

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¹ Gope Arun, “Environmental Issues and Sustainable Development”, 2019, p. 154

Environmental jurists coined another principle entitled as “Sustainable Development” to mitigate the damage. This principle envisages the necessity of development within the limitations to affect the environment. Plethora of legal legislations and judicial pronouncements have accepted and applied this principle either to allow or to prevent any industrial activity in India. The author insists to analyze the validity of Sustainable Development principle as an effective mode of environment protection. The author strongly contends that the principle is jurisprudentially incorrect to conclude a viable solution of an everlasting problem. Environmentalists across the globe failed to understand the factors responsible behind industrial revolution. Every single research was conducted with a unidirectional approach has several dimensions and most importantly several research projects were sponsored by the industries only in order to raise more profits by manufacturing several machines for human beings. Industrial sponsored research is responsible for dumping of enhanced versions of several products in the markets resulted in to increased dependability of human beings on machines in their daily life. As a result, degradation of the environment by the industrial pollutants continued since last two centuries. To conclude, Industrial Sponsored Research was indirectly supported while defining the principle of Sustainable Development.

Secondly, now a days, Scientists, Industrialists, Legislators, and researchers are more focusing on renewable energy resources such as wind energy, hydro energy, solar energy etc.² to save the planet from environment pollution. The author strongly opposes the approach because it leads to growth and development of another set of industries to manufacture more machines and products for the world population to cut down the growing energy requirements. Hence, everybody has overlooked the genesis of the problem of environment pollution since its inception. The author strongly admits that balancing the human needs with a complete decentralized model of “Sustainable Living”³ rather than “Sustainable Development” at every household level can be the only effective solution to the environment problems as also propagated by the Gandhian Model.

II. International legal regime on Environment Protection

United Nations Environment Programme (UNEP) has proved as one of the best international organization to bring 193-member countries to discuss the environmental concern at global level and had successfully assisted the member countries over several global environment concerns such as Ozone Depletion, Green House Gases Emission, Carbon Emissions, Oceanic Pollution etc. in the last 50 years since its inception. UNEP strongly advocates the Sustainable Development principle and replicates the same in the form of Millennium Development Goals (MDGs) and Sustainable Development Goals (SDGs).⁴ The author still believes that UNEP has not achieved all of its objectives till date since its applications are based on Sustainable Development principle which lacks the founding directives under Gandhian Approach for “Sustainable Rural Living”⁵. The author suggests through this paper that “Sustainable Development” principle must be replaced with “Sustainable Living”. Mankind has become over dependent upon machines and technologies across the globe. For instance, People in urban cities have paved the way for rise of food industries since they are unable to cook their food on their own due time constraints. People have forgotten the traditional cooking skills. Food industry has centralized its operations and several brands have taken over the market to manufacture and supply food items to the world population. Food industry is adding preservatives to the foods items. Several medical researchers have confirmed that the preservatives and

² <https://www.un.org/en/climatechange/what-is-renewable-energy> last visited on 15 July 2022

³ Kumar Praveen, “Global E-waste Management Laws” 2015, p. 320

⁴ Ahlawat Ajay, “Sustainable Development Goals”, 2019, p. 43

⁵ Gandhi M. K., “Village Swaraj”, 1962, p. 118

other chemical components used in food industry are cancerous and resulting in to severe chronic illness among humans and people have become addicted to it. The author strongly advocates for complete decentralization of the food industry and abolition of packed food industry. People must buy the food items from local areas and must prepare their food on their own to keen their health in a better state rather than taking packed food items and thereafter taking medicines to protect their health. That is the true model of sustainable living for future generations as well.⁶



Picture I: Chartist depiction of 17 Sustainable Development Goals



Picture II: Chartist depiction of 08 Millennium Development Goals

⁶ Kumar Praveen, “Global E-waste Management Laws” 2015, p. 320

United Nations framework provides for Millennium Development Goals (MDGs) set in the year 2000 at the beginning of 21st century with an aim to eradicate global poverty, gender equality, education for all, work against chronic diseases, environmental sustainability through global cooperation etc. Time line to achieve the above objectives was also fixed up to the year 2015. This was another benchmark in the history of environmental jurisprudence, but the author strongly suggests that concept of sustainable development as an environment protection model was adopted wrongly and as a result in the year 2015, MDGs were replaced with SDGs or Sustainable Development Goals and the time line was increased up to the year 2030. Moreover, in another incident, the author likely to mention here that United States of America was absent in the Paris Convention on Climate Change held in 2015 with an aim to limit the global warming below 2 degrees Celsius. The apathy and non-cooperation by a major contributor in the environment pollutants such as United States of America has proved that the international documents are so weak to counter such a growing menace of Environment degradation.

IV. Sustainable Development Goals

In the year 2015, Sustainable Development Goals (SDGs) were framed by the United Nations and duly adopted by the member countries was another landmark progress in the direction of Environment protection with 17 goals to be achieved by the year 2030. These goals are aiming at the flowing subjects such as eradication of global poverty, health, education, gender equality, sanitation, clean energy, economic growth, industrial innovation, sustainable cities, limits on production and consumption, climate change, life on the soil and in the ocean, peace and justice and global partnership etc. The primary objective behind the goals is to secure socio-economic-politico justice to the people with a strong concern to climate change⁷. The author strongly reiterates here that these objectives are not focusing on the root cause of the problem of environmental degradation. Industries and protection of environment can't go side by side. Similarly, depletion of forest cover by mankind is an irreversible process. No matter states are focusing on increasing plantation, but scientists have proved that afforestation is a natural process and plantation is an artificial process. Increased plantation is no substitute of the deforestation. Several plant species are getting extinct every year across the globe due to increased human activities in the forest. Moreover, the author concludes that increased capitalism has added fuel to the fire. History has proved that Capitalist structure of economy grants license to all citizens of a state to exploit the natural resources endlessly. Whereas Socialist pattern of economy limits the pace of exploitation of natural resources and degradation of the environment. Thus, the idea of Socialism, Sustainable Living were overlooked and idea of Sustainable Development was put forward. This is the primary reason behind failure of MDGs and the author apprehends that SDGs will also will meet a similar fate by the end of the year 2030⁸.

V. Gandhian model of sustainable rural development

M. K. Gandhi was a lawyer, anti-colonial nationalist and political ethicist had portrayed a self-reliant model for sustainable living in Rural India in early decades of 19th Century. He noticed that British rule was focused on industrialization and dumping the manufactured goods in the Indian markets. Whereas Gandhi accepted the dire need to develop agriculture sector of Indian economy with reorganizing and reconstructing network of rivers in order to distribute sufficient water for irrigation across India. He was seen as weaving cotton on his own to portray that Indians must be self-reliant to produce clothing's for them on their own and discard foreign goods. He was the icon for establishing cottage industries at village level. He strongly emphasized that cottage industry as the foremost vital industry for any village to generate maximum

⁷ Krishnan N. R., "A Green Economy", 2022, p. 102

⁸ Kumar Praveen, "Global E-waste Management Laws" 2015, p. 405

employment opportunities to the people at the village level and that pollutes the environment at the minimum level.

Cottage Industry at village level was the first instance of decentralized model of sustainable living at village level especially designed to ensure employment to the weaker sections of the society in order to enable them to improve their standard of living. His approach was to develop a village in such a way that rural population will never move to the urban areas for better living in future. He worked to provide basic amenities such as drinking water, electricity, schools and health center etc. at village level. Moreover, his ideology was more focused on establishing strong standards of moral values and ethics over material gains.⁹ He was a strong advocate of the global principle “Vasudhaiva Kutumbakam” and held mass movements for enforcement of human rights against the tyrannical rule under British Empire. He believed that an ideal society shall work on the ethical and moral principles laid down in the Hindu holy scriptures such as Upanishads and Bhagwad Gita. In Indian History, Gandhi was the first leader who guided the society in lines of an ideal social order as enshrined in the concept of “Ram Rajya”. In the lines of M.K. Gandhi:

“The concept on Ram Rajya is based on a principle where people are Sovereign and source of Sovereignty is based on moral authority. Ram Rajya is such a democratic social order in which people are supreme. Rama is not a just king and people are not his subjects. Rama, who stood for God or one’s own inner voice and people who work for the growth and development of society.”

-M. K. Gandhi

VI. Decentralized sustainable living model for an ideal village

Village is generally ignored in any political order in a country like India where more than 6.40 Lakhs villages are spread over 3.28 Lakhs square kilometers which is just 2.4% of the total earth’s surface. As per population census of 2020, Indian population stood at No.1 Position across the world with more than 150 crores people where 70 % of its population still live in the village. The village is the basic unit of the Gandhian ideal social order. In the lines of M. K. Gandhi:

“If the village perishes India will perish too.... We have to make a choice between India of the villages that is as ancient as herself and India of the cities which are a creation of foreign domination”.

-M. K. Gandhi

Gandhian model of self-governance model for villages was in favor to constitute federation of self-governing autonomous republics. He formulated the following guidelines to recognize the entity of a village as self-governing republic¹⁰:

- i. Central Govt. shall coordinate with the village republics to facilitate the equal division of natural resources to provide education, health facilities, electricity, water, finance to all the village authorities.
- ii. Village republic shall take decisions on the matters of general importance and Central Govt. should not exercise its discretions over the resolutions made by the village republics.
- iii. Village republic self-governance was a true example of complete decentralization of powers and village shall be empowered to work for the interest of the general public on the principles of Sustainable Living.

⁹ Mahato S. S., “Sustainable Development: The Emerging Trend”, 2022, p. 271

¹⁰ Gandhi M. K., “Village Swaraj”, 1962, p. 67

- iv. Social and political power must be completely decentralized to enable village republics. Decision making power must be given to the Village Panchayat rather than central and state governments.
- v. Village Panchayat must be empowered to exercise legislative, executive and judicial powers.
- vi. Village Panchayat must work for education, health, sanitation, upliftment of 'untouchables', eradication of poverty etc.
- vii. Village Panchayat must be empowered to resolve all the conflicts and disputes within the villages.

VII. Decentralized model of protection of environment and sustainable living

The author intends to apply the Gandhian approach of self-governance to village republics and analyses the outcome to protect the environment from degradation. If we look at the Indian society, which can be turned as a role model for the global society has vast potential to cut down their fundamental needs for a sustainable living. 3 R's of the environmental policies such Reduce, Reuse and Recycle are very vital for Indian environmental legislations. Whereas the author strongly recommends the first R, it means Reduce, shall be the primary thumb rule for Indians to think about environment before adding materials in their households. The second priority shall be given to second R, it means Reuse, if we fail to reduce. Reuse shall be made applicable as the second alternative and finally, the third R, that's Recycle, may be resorted at the end. For Instance, Indian population has purchased 326.3 million vehicles since 2022.¹¹ Fuel prices are also reached at a very high index in the past few decades. If an ordinary employed person is planning to buy a vehicle, he must opt out to add another vehicle on the road and must plan to commute via car-pool, public transport modes such Railways, buses, bicycle etc. to reduce the pollutants in the environment. Society shall cut down their luxurious demands and must limit up to fundamental necessities to save the planet for future generations.

VIII. Decentralized model of solid waste management

Solid waste management (SWM) is a major problem for several Urban Local Bodies (ULBs) in India, where urbanization, industrialization and economic growth have resulted in increased municipal solid waste (MSW) generation per person¹². Effective SWM is a major challenge in cities with high population density. Achieving sustainable development goals within a country experiencing rapid population growth and improvements in living standards has become impossible in India because it is a diverse country with many different religious groups, cultures, and traditions.

Despite development in social, economic and environmental areas, SWM systems in India have remained relatively unchanged. The informal sector has a key role in extracting value from waste, with approximately 90% of residual waste currently dumped rather than properly landfilled¹³. There is an urgent need to move to more sustainable SWM, which doesn't require new management systems and waste management facilities but a complete shift of the onus on the people to manage their solid domestic waste on their own. Current SWM systems are inefficient, with waste having a negative impact on public health, the

¹¹ International Union for Conservation of Nature, Edi. 2022, p. 98

¹² "Solid waste management rules, 2016", Civils daily, 15 September 2017, Retrieved 26 March 2019.

¹³ "Solid waste management rules, 2016", Civils daily, 15 September 2017, Retrieved 26 March 2019.

environment, and the economy¹⁴. The Waste Management and Handling Rules in India were introduced by the Ministry of Environment and Forests (MoEF)¹⁵, yet, compliance is variable and limited.

In the present day, metropolitan cities such as Delhi, Bengaluru, Chennai, Kolkata are facing the worst ever menace of disposal of household waste. These cities have spent a huge budget on providing infrastructure for collection and disposal of solid waste from the household. The author concludes that the solution of problem of solid waste lies in decentralization rather than the present centralized mechanism. Some important facets of proposed decentralized solid waste mechanism are as follows:

- i. Municipal Authorities should stop the practice of collection of the bio-degradable waste such as vegetable, fruits, garbage, leaves, plant wastes etc. from the households.
- ii. Municipal Authorities must collect the non-bio-degradable waste such as polythene, plastic, e-waste, metallic waste, bio-medical waste and other hazardous waste etc. only for proper recycling and safe disposal.
- iii. Municipal Authorities shall make every household responsible for disposal of their bio-degradable waste on their own. This will reduce the solid waste drastically at the city level and people will learn to decompose their bio-degradable waste to produce bio-manure which can be used by them in their gardens.
- iv. Local Authorities shall stop the sale and purchase of Polythene bags in the local markets and inspire people to carry the bags for buying grocery items from the market. Several drives to stop the polythene bags have been run by the Municipal authorities from time to time but overall outcome could not be achieved in absence of proper education to the people at large.
- v. Municipal Authorities must educate the people to think about the environment first before they through the waste products in the streets.

IX. Decentralized model of ground water conservation

The author strongly reiterates that people at large in India have become insensitive towards water conservation issues. District Authorities are more focusing on construction of new roads, streets, sanitation work and ground water conservation has completed opted out even at the District & village level. Several administrative offices operating at the rural levels have excused themselves from the responsibility of ground water conservation due to scarcity of funds and lack of will power. Apathy of people's participation in the decision-making process of the District Administration is also one of the major reasons behind such

¹⁴ "Government notifies new solid waste management rules", www.downtoearth.org.in/ Retrieved 26 March 2019.

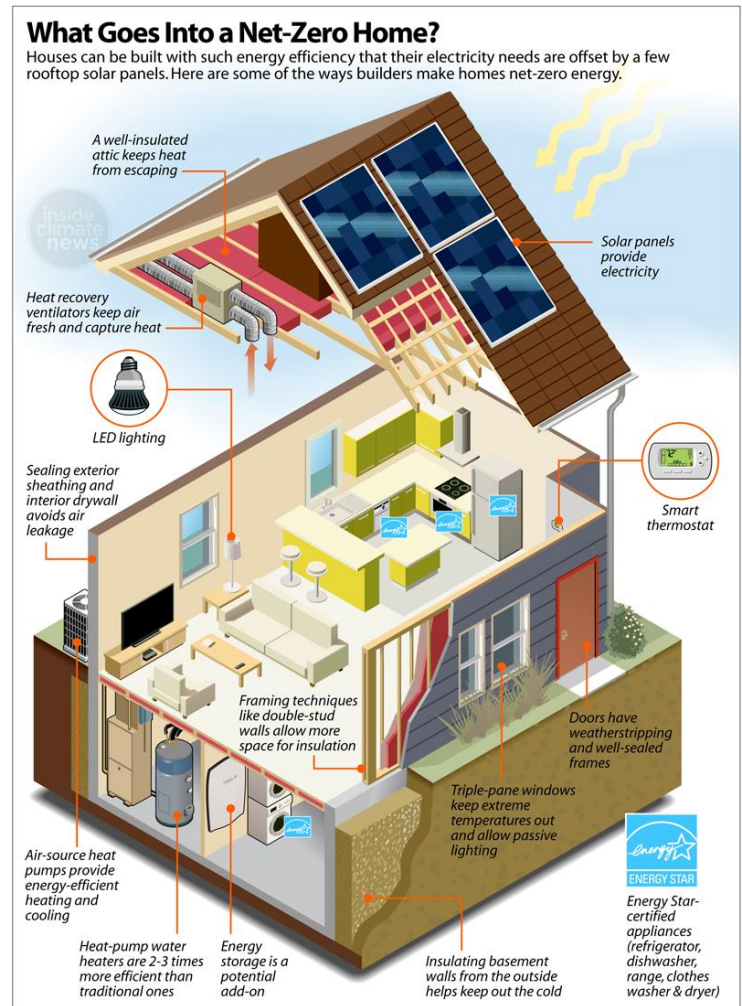
¹⁵ "Solid Waste Management Rules Revised After 16 Years; Rules Now Extend to Urban and Industrial Areas: Javadekar", pib.nic.in. Retrieved 26 March 2019.

situation of ground water depletion. Whereas lack of proper knowledge, corruption, socio-political dimensions of the society etc. are the contributory factors responsible for inefficiency of Authorities to take imminent measures for Ground water conservation. It is imperative not to get overwhelmed by the enormity of the problem. Different entities have to make sure they put in maximum effort. Policies of decentralized water management have to empower the *society* and govern it since it has to be the locus of governance and control.¹⁶

The author strongly recommends that people must be educated by the Municipal Authorities and Gram Panchayat to conserve water and they must bring more reverse boring projects in association with local people to send rain water back to the soil. This decentralized model of the ground water conservation shall be adopted even at National level to counter the rising problem of ground water depletion. In the words of Gro Harlem Brundtland:

“Sustainable development is the development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

- Gro Harlem Brundtland



Picture III: Zero Carbon Emission Model House

X. Decentralized Model for improving Air Quality Index

An Air Quality Index (AQI) is the primary unit used by agencies to check the quality of the air in which people are breathing in any city or in any state. With the overwhelming dependence on machines, industries, science & technology, transport & communication etc., we are moving towards an age where it is evident with the following statistics such as India's per capita energy consumption was 1255 kWh in 2021-22, which is around one-third of the global average of per capita energy consumption.¹⁷ With the increasing population and thereby increase in the per capita energy consumption, carbon foot prints are also rising in the atmosphere. AQI has reached to an alarming mark of 450+ in several metropolitan cities in India whereas the best AQI should be kept below 50 for a sustainable and healthy living.

The author strongly recommends that the Zero Carbon Emission Housing model for a sustainable living as shown in the picture –III shall be adopted across the country to improve AQI. Environment friendly homes must be constructed by the people in order to decrease their dependability on the Govt. to meet their growing energy requirements. Every household unit must be accompanied with the necessary facilities to treat their

¹⁶ www.indiawaterportal.org/articles/decentralized-water-resources-management last visited on 21 May 2023

¹⁷ www.pib.gov.in/PressReleaseDetail last visited on 2 June 2023

solid waste, to conserve ground water, to produce electricity on their own. This model will substantially reduce the burden over the Govt. agencies to provide more energy to exploit more natural resources and more industries to meet the consumer demands.¹⁸ In the following words of Peter Drucker:

“The best way to predict the future is to create it.” - Peter Drucker.

XI. Findings and Recommendations

The author tends to summarize the following measure based on the above analysis in order to implement decentralized model of sustainable living in India which will be more effective and permanent in this direction of environment conservation.

- i. Gram Panchayat in coordination with District Authority must conduct awareness sessions to impart training to villagers to preserve water at household level.
- ii. Every household must make proper channel to send the rain water back to the soil through reverse boring during rainy season. Few metropolitan cities in India have already started the work in this direction at community level.
- iii. People in the village must reuse their bio-waste and waste water by constructing Bio-Gas plant in their homes which will produce sufficient bio-gas for cooking in each household and it will also resolve the issue of sewage systems in the villages.
- iv. People must decompose their solid waste at their homes and they must be educated to build their Zero Carbon Emission Homes which shall be not be dependent on the Govt. for fundamental energy requirements, water, electricity and gas etc.
- v. People shall erect solar panels on their roof tops, wind mills etc. to meet their energy requirements. This will reduce the burden on the Govt. to cater increasing demand of energy across the country.
- vi. People shall be educated to construct Zero Carbon Emission Homes, use of public transport, population control etc. which are the only solutions to the rising problem of environmental degradation.
- vii. People shall be compelled to use public transport such as Trains and buses for longer journeys and bicycles for shorter distance to reduce the carbon footprints and to improve the AQI across the globe.
- viii. People must prefer to buy local goods for consumption and must avoid imported goods. People must depend on local institutions to avail education and jobs. This will indirectly slow down the pace of industrialization across the globe.

In the words of Paul McCartney:

“There must be a better way to make the things we want, a way that doesn’t spoil the sky, or the rain or the land.”

- Paul McCartney

¹⁸ International Journal of Environmental Research, edi. 2023, p. 67

XII. Conclusion

The Author concludes that the principle of “Sustainable Development” must be reconstructed as “Decentralized Sustainable Living”¹⁹. The word “Development” itself guarantees the exploitation of natural resources and results in to environmental degradation at global level. Whereas sustainable living is the principle which is aiming at uplifting the society to live in such a manner to maintain the living standards with the conservation of natural resources for future generations in equilibrium with the nature.

People must learn from life of an ordinary “Tree”. An ordinary tree is born out of a seed. It takes water and minerals from soil but it never pollutes the soil with pollutants such as plastic and polyethene’s etc. A Tree improves the AQI of the environment by supplying pure oxygen and reducing carbon gases. It never produces smoke in the air. It shreds its leaves and thereby enriching the soil with nitrogen. It gives food to the people in the form of a fruit. At the end of its life, it goes back to the soil and thereby increases its fertility for the next generation of the trees to flourish. Whereas mankind is doing all activities in a reverse order. Humans are known for exploiting the natural resources to the best possible extent of their capabilities. Humans have increased the pollutants in Air, Water and Soil to the fullest. Human beings have not realized the menace of the impact of their activities that several future generations will have to struggle in next several years to wipe out these pollutants and restore the climate change back to normal²⁰.

“Decentralized Sustainable Living” model is focused on educating individuals to cut down their energy requirements and become self –reliant to meet their demands. Implementation of this model can really achieve the SDGs in next fifty years and can successfully control the menace of global warming across the globe. Let there be a global pledge to educate the human beings to adopt this model of “Decentralized Sustainable Living” and learn to live with equilibrium with the nature. If we cut a tree, we must plant minimum 10 trees before that. Such active approach towards sustainable living can guarantee life on this planet for next several years.

¹⁹ Kumar Praveen, “Global E-waste Management Laws” 2015, p 67

²⁰ The Journal of Environment & Development, edi. 2019, p.54

PRIVACY PARADIGM: UNDERSTANDING DATA PROTECTION IN THE INDIAN CONTEXT

Dr Anila V Menon*

Abstract

Data protection and privacy are inextricably interwoven, and they currently occupy a highly important and delicate area in the legal system. Data protection and privacy have become critical issues in the digital era, with cybercrime and data breaches posing significant threats. This paper explores the state of data privacy and protection in India. It examines the legal landscape surrounding data privacy, focusing on the landmark judgment recognizing the right to privacy as a fundamental right and the subsequent introduction of the Digital Personal Data Protection (DPDP) Bill 2022 (now the Act). The bill aims to regulate the collection, processing, and storage of personal data and establish a comprehensive framework for individuals to control their data. Key features of the bill, including consent, purpose limitation, data localization, and individual rights, are discussed, emphasizing the importance of informed and explicit consent for data sharing. The obligations of data fiduciaries and the establishment of a Data Protection Authority (DPA) as an independent regulatory body are also explored. The paper concludes by emphasizing the need for effective implementation and enforcement of data protection laws to safeguard personal data and mitigate cyber risks.

Keywords: *Data privacy, Data protection, Digital Personal Data Protection Bill 2022 (Act 2023), Consent, Data fiduciaries, Data Protection Authority, Cyber threats.*

I. Introduction

As per “eSentire” 2022 Official Cyber Crime report, “The global annual cost of cybercrime is predicted to reach \$8 trillion annually in 2023” and the year 2023 is already here! A study done by F-Secure's¹ honeypot data, reveals that Russia, the USA, China, the Netherlands and Germany targeted India with 436,090 attacks. (Honeypots are basically decoy servers that emulate the real IT environment of a business enterprise.) This is nearly 12 times more, than which originated from India. The top five countries that were targeted by Indian cyber attackers were Austria, the Netherlands, the UK, Japan, and Ukraine a total of 36,563 cyber-attacks. “The relatively higher number of inbound attacks on Indian honeypots reflects how the fast-digitizing country, is becoming more lucrative for global cyber criminals,” observed Leszek Tasiemski, Vice President of cyber security products R&D at F-Secure.² Data breach has become a common offence to which Indians are often victimized. Another recent study by Gemalto³, reveals that around 4.5 million data records in India have been breached in the year 2018. A data breach is the intentional or unintentional release of secure or private/confidential information to an untrusted environment.

According to a new Surfshark report, there were 48.5% fewer global data breaches in the first quarter of 2023. According to the study, 41.6 million accounts were exposed in quarter one 2023 as opposed to 80.8 million in quarter four 2022. Despite being among the top five in the previous quarter, leaked

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¹ F-Secure Corporation is a Finnish cyber security and privacy company based in Helsinki, Finland.

² Sakshi Post Nov 12,2018

³ Gemalto is an international digital security company providing software applications, secure personal devices such as smart cards and tokens, and managed services.

accounts significantly decreased in 2023 quarter one in India, China, and South Sudan. Other terms for this phenomenon include unintentional information disclosure, data leak and also data spill. Cyber attackers are now more organized. Many hackers have significant funding. The trends in the year 2023 is even worse. “The emerging digital ecosystem is treacherous. In our current digital environment, every company is now a reachable target, and every company, large or small, has operations, brand, reputation, and revenue pipelines that are potentially at risk from a breach.”⁴

II. Data Safety

The government of India has identified that the data breach is the most dreaded feature in the cyber space. After Covid19 pandemic many people have moved to the cyberspace to carry out their day-to-day transactions. More and more data are stored in the cloud. We can come to a safe conclusion that digital literacy is close to 100%. When more data is available it makes it easier for the cyber criminals to make use of these data for their fraudulent intention and defraud people. India faces one of the highest cyber security threats in the Asia Pacific Region. Indian companies receive up to 500,000 security alerts a day, 39 percent of them go unattended due to lack of required skill sets as per Cisco survey. It is appalling to observe that a large percentage of this goes unattended whatever be the reasons. In the year 2017 the Supreme Court of India in Justice *Puttaswamy vs. Union of India*⁵ very clearly said that right to privacy is a fundamental right and directed the government to bring in legislations to regulate the right to privacy both in the offline and the online arena. This judgment laid down the foundation for the protection of privacy in India and set important precedents for future cases involving privacy rights in digital era. It recognized the need for robust data protection laws and safeguards against the collection, storage, and use of personal data. Subsequent to this judgment, the Indian government introduced the Personal Data Protection Bill in 2019 (now the Digital Personal Data Protection (DPDP) Act 2023), which aims to regulate the collection, processing, and storage of personal data, and establish a framework for individuals to exercise control over their data. This bill received the affirmation from the cabinet and will be placed before the Parliament in the monsoon session.

III. Privacy in the Cyberspace

The Constitution of India does not specifically talk about the right to privacy. It is incorporated in Article 21 i.e. right to life. The word has a wide meaning and includes privacy in cyberspace also. The data that a person reveals in the cyberspace stays in the cloud forever. The concept of privacy in cyberspace is a serious subject matter. There aren't any specific laws which deals with the data privacy in the cyberspace. The Information Technology Act after its amendment in 2008 have interleaved section 43 A regarding sensitive personal data of individuals. A subsequent rule was also issued regrading this which makes the corporations liable if any such sensitive data is misused. Sensitive personal data includes passwords, biometric information, sexual orientation, medical records and history, credit/ debit card information etc. The Digital Personal Data Protection Bill 2022, which was partially modelled on the European Union General Data Protection Regulation is theoretically to be a solution for the issue of data privacy and protection. The 2022 Bill aimed to establish a framework for the processing of digital personal data that acknowledges the dual importance of respecting individuals' rights to safeguard their personal data while also addressing the necessity of processing personal data for legitimate purposes.

The law applies to personal information gathered online or offline but has been digitalized and is covered by the law. So here digitization is of prime importance. Suppose the processing of personal data takes place outside of India and is related to activities such as supplying goods or services inside of India or creating profiles of Indian principals. In that case, the legislation will be applicable to that

⁴ Brooks, C. (2023, March 6). Cybersecurity Trends & Statistics For 2023; What You Need To Know. *Forbes*.

⁵ AIR 2017 SC 4161

processing too. The law also exempts the processing of data pertaining to persons outside Indian Territory who are subject to a cross-border contract; this essentially covers the offshore/outsourcing segment. Apart from the collection of data, the most important and essential aspect is consent. This is a very complex word. Consent has to be free, informed, specific, and unambiguous which has to be conveyed in a clear, affirmative manner. It would seem obvious that express consent would be needed. It is also possible to withdraw consent, in which case the data subject would be responsible for the results. The Act also cited commonplace justifications for collecting personal data, such as adhering to legal obligations, responding to epidemics, or maintaining law and order. Different techniques seem to be used to define genuine interest. Consent is presumed to have been provided in a number of circumstances, namely processing personal data “in the public interest” such as to stop or detect fraud, for network and information security, credit scoring, processing personal data that is publicly available, and for debt collection.

IV. Digital Personal Data Protection Act 2023: Important Features

Technology is growing rapidly in the world, and the internet is ubiquitous, breaking down geographic boundaries in the flow of information. Data has become an important part of our daily lives and almost every aspect of modern life is connected in some form of file. Whether it's social media, banking, or retail, our daily processes are intimately connected with data. This increased connectivity has created new and complex challenges for privacy and data protection, making it critical for individuals to ensure control over their personal data. As one of the fastest-growing economies, India is at the forefront of this digital transformation with the digitization of various sectors and the launch of the 'Digital India' Programme. On August 3, 2023, the Minister of Electronics & Information Technology introduced the Digital Personal Data Protection Bill, 2023, in the Lok Sabha. Subsequently, it received approval from both houses of Parliament, with the Lok Sabha passing it on August 7, 2023, and the Rajya Sabha unanimously endorsing it on August 9, 2023. The bill obtained Presidential assent on August 11, 2023.

Prior to this development, the Central Government had withdrawn the previous Personal Data Protection Bills of 2019 and 2022 due to various amendments and concerns related to data localization, transparency, and compliance. This new legislation emerged following a landmark Supreme Court ruling in the case of Justice K.S. Puttaswamy vs. Union of India in 2017, which recognized the 'Right to Privacy' as a fundamental right under Article 21 of the Indian Constitution. The court recommended the enactment of a law to safeguard personal data. The new Act aims to provide a legislative perspective on the protection of personal data and individual rights in India's rapidly growing digital environment.

Its objective is to establish a comprehensive framework for the protection of personal data in India. It incorporates principles and provisions for collecting, processing, storing, and transferring personal data by various entities, including government agencies, private organizations, and individuals.

The Act defines personal data as any data that relates to an individual who can be identified from that data. It covers both natural persons and legal entities. Consent is the catchphrase of this Act. It emphasizes on obtaining explicit and informed consent from individuals before collecting and processing their personal data. It introduces the concept of “purpose limitation”, meaning data can only be used for the purposes specified at the time of collection. The user's consent, which is considered automatic and revocable at any time, is mandated. Additionally, it imposes the responsibility on data fiduciaries (individuals or entities determining how personal data is processed) to uphold data accuracy and security, and to erase the data once its intended purpose has been fulfilled.

The consent of the data principal should be freely given, specific, informed, and unambiguous, indicating their agreement to the processing of their personal data for the specified purpose. The specified purpose refers to the purpose mentioned in the notice provided by the data fiduciary to the data principal. Any part of the consent that infringes on the provisions of the proposed Act will be considered invalid. The request for consent must be presented to the data principal in clear and plain language, along with the contact details of a Data Protection Officer or authorized person for communication regarding the exercise of data

principal's rights. The data principal should have the option to access the consent request in English or any language specified in the Eighth Schedule to the Constitution of India⁶. The data principal has the right to withdraw their consent at any time, and the consequences of such withdrawal will be borne by the data principal. The withdrawal of consent does not affect the lawfulness of the processing based on consent before its withdrawal. Deemed consent is applicable in certain situations, such as when the data principal voluntarily provides their personal data, for compliance with laws, responding to medical emergencies, ensuring public health and safety, employment-related purposes, public interest purposes, and other fair and reasonable purposes prescribed by the Act. The Right to Correction and Erasure of Personal Data allows the Data Principal to request the correction or erasure of their personal data in accordance with applicable laws and prescribed procedures. Upon receiving a request for correction or erasure, the Data Fiduciary must correct inaccurate or misleading personal data, complete incomplete data, update data, and erase data that is no longer necessary for the original purpose of processing, unless retention is legally required.

The importance of data localization is highlighted. The Act requires certain categories of personal data to be stored and processed only within India. Critical personal data is not specifically defined. The individuals have sole rights over their personal data, which includes the right to access, correct, erase, restrict or object to the processing of their data. The Act also provides right to data portability, enabling individuals to transfer their data between service providers.

The Obligation of data fiduciary is another important feature of the proposed Act. The obligations of a data fiduciary include processing personal data of a data principal in accordance with the provisions of the Act and its Rules, for a lawful purpose with the consent of the data principal. "Lawful purpose" refers to any purpose that is not explicitly prohibited by law. Before seeking consent, a data fiduciary must provide a clear and plain language notice to the data principal, including a description of the personal data to be collected and the purpose of processing. If the data principal has already given consent prior to the Act's commencement, the data fiduciary must provide a similar notice promptly, describing the collected personal data and the purpose of processing. A data fiduciary has general obligations, including being responsible for compliance with the Act regardless of any agreement or non-compliance by the data principal. They should make efforts to ensure the accuracy and completeness of processed personal data, implement appropriate technical and organizational measures, protect personal data from breaches, publish the contact information of a Data Protection Officer, have a grievance redressal mechanism, and enter into valid contracts when sharing or processing personal data. Additional obligations apply when processing personal data of children, including obtaining verifiable parental consent, avoiding processing likely to cause harm to children, refraining from tracking or behavioural monitoring of children, and targeted advertising directed at children.

Another important feature of the Act is the Data Protection Authority. Data Protection Authority of India (DPA) should be established and must operate as an independent regulatory body. The DPA would be responsible for overseeing and enforcing the provisions of the Act. It mandates organizations to report any significant data breaches to the DPA and affected individuals. Another important feature is regarding cross-border data transfer: The Act permits the transfer of personal data outside of India under certain conditions, such as the approval of the DPA or the use of approved mechanisms, including standard contractual clauses or intra-group schemes.

V. Conclusion

The increase in cybercrime and data breaches in India is a concerning issue that demands immediate attention. The country is becoming a lucrative target for global cybercriminals, as highlighted by the rise in inbound attacks on Indian systems. The lack of skilled professionals to handle the growing number of

⁶ Lists the official languages of the Republic of India.

security alerts further exacerbates the situation. However, the Indian government has recognized the gravity of the situation and taken significant steps towards data protection and privacy.

The Supreme Court's landmark judgment affirming the right to privacy set the foundation for the protection of personal data in India. Subsequently, the Digital Personal Data Protection Bill 2022 was introduced to regulate the collection, processing, and storage of personal data. The Act emphasizes obtaining explicit and informed consent from individuals, introduces the concept of purpose limitation, and requires data fiduciaries to maintain data accuracy and security. It also establishes the Data Protection Authority as an independent regulatory body responsible for overseeing and enforcing data protection provisions. The Act aims to establish a comprehensive framework for data protection in India, aligning with global standards. It emphasizes the individuals' rights over their personal data, including the right to access, correct, erase, restrict, or object to data processing. The Act also addresses data localization, data portability, and obligations of data fiduciaries. Defining timelines for obligations, clarifying the definition of "public interest," specifying the composition and powers of the Data Protection Authority, and ensuring appropriate penalties for non-compliance are some of the issues that require attention. The delegation of complicated issues and the wide set of exceptions in the draft Bill also raise concerns. The absence of provisions specifically addressing sensitive personal data is another area that needs clarification. While the Act represents a significant step forward, its effective implementation and enforcement will be crucial in combating data breach and ensuring data privacy in India. It is essential for individuals, organizations, and the government to work together to create a secure digital ecosystem where personal data is protected, and individuals have control over their information.

The development of India's privacy framework, which reaches its apex with the enactment of the Digital Personal Data Protection Act, 2023, demonstrates the nation's dedication to safeguarding the fundamental right to privacy in the digital era. Although the Act represents substantial progress, its successful execution and the addressing of emerging obstacles are paramount to ensuring that India's data protection structure genuinely benefits its populace and the entire country. Privacy remains a dynamic and progressive domain, and India's strategy to data protection will persistently adjust to the continually shifting technological environment. While the Digital Personal Data Protection Act, 2023, signifies a substantial stride in the realm of data protection, it also poses challenges during its implementation. Enterprises and institutions will be required to acclimate themselves to the fresh regulatory framework, allocate resources to fortify data protection measures, and ensure strict adherence to the legal provisions. The interpretation of specific clauses, particularly those concerning cross-border data transfers and exemptions for government data processing, is likely to undergo close examination and legal scrutiny. Furthermore, the effectiveness of the Act hinges on its vigorous enforcement by the Data Protection Authority and the cooperative engagement of all stakeholders, encompassing government bodies, businesses, and individuals alike. Striking a balance between the imperative for data protection and the promotion of innovation and economic advancement will remain an ongoing and intricate challenge.

THE DOHA DECLARATION AND ITS SIGNIFICANCE IN PROMOTING PATENT FLEXIBILITY FOR PUBLIC HEALTH

Sheheen Marakkar*

Abstract

The interplay between intellectual property rights and public health has witnessed noteworthy developments in recent decades. With the advent of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), significant flexibilities were introduced to reconcile patent rights with public health imperatives. This study delves into the explicit flexibilities under TRIPS and evaluates South Africa's Medicines and Related Substances Control Amendment Act of 1997, an illustrative case that precipitated international debates on the TRIPS agreement. Central to this discourse is the Doha Declaration on the TRIPS Agreement and Public Health, which reaffirmed member countries' rights to leverage TRIPS flexibilities. Within the ambit of the Doha Declaration, this paper scrutinizes its scope, general statements, and clarifications on flexibilities, emphasizing the transfer of technology and extension provisions for Least Developed Countries (LDCs). Moreover, the declaration's mandates on follow-ups and the distinctive system for compulsory licensing of pharmaceutical exports are dissected. Drawing parallels, India's approach to patent flexibility, as manifested in The Patents Act, 1970, is contrasted, revealing the diverse strategies nations employ to address public health while honoring international commitments.

Keywords: Doha Declaration, Patent flexibility, Public health, TRIPS Agreement, Compulsory licensing.

I. Introduction

The intersection of intellectual property rights (IPR) and public health has long been a contentious issue in international trade and development. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), administered by the World Trade Organization (WTO), has often been criticized for potentially hindering access to affordable medicines, particularly in developing nations.¹ In response to these concerns, the Doha Declaration on TRIPS and Public Health was adopted at the WTO Ministerial Conference held in Doha, Qatar, in 2001. This landmark declaration has since played a significant role in promoting patent flexibility to safeguard public health interests globally.

To understand the significance of the Doha Declaration, it is essential to consider the historical context in which it emerged. The TRIPS Agreement, which came into force in 1995, represented a major shift in international trade and intellectual property norms.² Its mandated member countries to grant patents for pharmaceutical products and processes, effectively extending patent protection to medicines.³ This posed a significant challenge for many developing countries, as it could potentially lead to restricted access to essential medicines due to high drug prices. The HIV/AIDS pandemic in Africa and other health crises underscored the urgency of addressing this issue. Developing countries argued that the TRIPS Agreement should allow for flexibility in patent enforcement, particularly concerning public health emergencies

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¹ Frederick M. Abbott, "The Doha Declaration on the TRIPS Agreement and Public Health: Lighting a Dark Corner at the WTO," *Journal of International Economic Law* 5, no. 2 (2002): 469-505.

² Ellen F. M. 't Hoen, "TRIPS, Pharmaceutical Patents, and Access to Essential Medicines: Seattle, Doha and Beyond," *Chicago Journal of International Law* 3, no.1 (2002): 27-46.

³ Carlos M. Correa, "Implications of the Doha Declaration on the TRIPS Agreement and Public Health," *Health Economics and Drugs Series* No. 012 (Geneva: World Health Organization, 2002), 8-12.

The Doha Declaration in 2001 clarified the existing flexibilities under TRIPS to address this issue. When Agreement on Trade-Related Aspects of Intellectual Property Rights was adopted in 1995, its primary goal was to harmonize intellectual property laws globally and establish a minimum standard for protection. However, developed and developing nations had different perspectives from the outset. Developed countries, holding a majority of the world's intellectual property rights, sought strong enforcement of these rights. In contrast, developing nations preferred less stringent enforcement to support their economic development without hindrance from the monopoly of developed nations on intellectual property.⁴ Given that developing countries are not significant creators of intellectual property, they have limited motivation to enforce robust protection measures.⁵ They argue that weak protection is justifiable because it allows the developing world to have extensive access to Western intellectual goods, which is essential for their own progress and development. Strict standards of protection, they contend, can be inhibiting and hinder their advancement. The rationale behind this perspective is that developing countries prioritize access to Western intellectual goods over stringent protection measures, recognizing the importance of striking a balance between protection and the developmental needs of the developing world.

Under the TRIPS Agreement, member states are obligated to grant patents for inventions in all technological fields, including pharmaceutical products. These inventions must meet certain criteria, such as novelty, inventive step, and industrial application.⁶ This has been a contentious issue between developing and developed countries. The majority of research and development in the pharmaceutical sector occurs in developed nations, which generally advocate for robust intellectual property protection. However, patenting medicines and pharmaceutical products poses challenges for developing and underdeveloped countries in their efforts to safeguard public health, leading them to oppose it. TRIPS attempted to address these differences by requiring the extension of patent protection to drugs in all signatory nations, along with provisions for compulsory licenses and staggered compliance deadlines.

II. Flexibilities under TRIPS

The TRIPS Agreement includes flexibilities that allow member countries to qualify or limit intellectual property rights (IPRs).⁷ These flexibilities, particularly concerning patents, are outlined in Articles 30 and 31 of the agreement. Article 30 provides exceptions to the rights conferred by IPRs, while Article 31 addresses certain uses without the authorization of the right holder, such as compulsory licenses.

Article 31 of TRIPS specifically enables flexibility in the pharmaceutical industry to protect public health interests. It allows for the government use and grant of compulsory licenses under national legislation. Some argue that Article 31 is not an exhaustive list of grounds for compulsory licensing, and that other unlisted grounds could also justify such licenses under TRIPS. This interpretation is supported by Article 8, which permits members to adopt measures necessary for protecting public health and promoting the public interest, provided they are consistent with the agreement.

According to Article 31, if a member country's law permits the use of a patented subject matter without authorization, including use by the government or authorized third parties, certain conditions must be met. These conditions include considering each authorization on its individual merits, making efforts to obtain authorization from the right holder on reasonable commercial terms (unless waived due to national emergency or extreme urgency), limiting the scope and duration of use, ensuring non-exclusivity and non-assignability, authorizing use predominantly for the domestic market, and providing adequate remuneration

⁴ Tara Kalagher Giunta & Lily H. Shang, "Ownership of Information in a Global Economy", *GEO. WASH. J. INT'L L. & ECON.* (1994):327.

⁵ World Trade Organization, "Declaration on the TRIPS Agreement and Public Health," *Ministerial Conference, Fourth Session, Doha, 9-14 November 2001*, WT/MIN (01)/DEC/2, 20 November 2001.

⁶ The Agreement on Trade-Related Aspects of Intellectual Property Rights 1994, Art.27.

⁷ Correa, Carlos M. "The Doha Declaration and TRIPS Flexibilities: From 'No-Name Solution' to Doha-Lite." *Journal of World Intellectual Property* 12, no. 6 (2009): 639-661.

to the right holder. The decision relating to authorization and remuneration is subject to judicial or independent review. Compulsory licensing, as a practical measure, allows governments to authorize the use of patented products without the consent of the patent holder, preventing the abuse of patent rights under TRIPS.

In the years following the adoption of the TRIPS Agreement, concerns arose regarding the sufficiency of these flexibilities to support public health and ensure affordable access to existing medicines, while also promoting research and development of new ones. Uncertainties existed regarding the interpretation and scope of these flexibilities, the willingness of WTO and its members to interpret them in a pro-public health manner, and the extent to which members would feel free to utilize these flexibilities without facing pressure from their trading partners.

III. South Africa's medicines and Related Substances Control Amendment Act of 1997

Despite the TRIPS Agreement, disputes regarding pharmaceutical protection persist among member nations.⁸ In 1997, South Africa implemented the Medicines and Related Substances Control Amendment Act to improve the affordability and accessibility of drugs, particularly in response to the country's AIDS epidemic. This move prompted the United States to threaten economic sanctions against South Africa, claiming that the Act violated TRIPS. The United States Trade Representative (USTR) report from April 30, 1999, demanded South Africa to bring its intellectual property rights regime in line with TRIPS by January 1, 2000. The USTR also requested clarification on the Act's compatibility with international obligations and expressed concerns about potential weakening or abrogation of patent protection. South Africa defended the Act's legality under international law and argued that the United States was pressuring them to safeguard American pharmaceutical interests.

While the Act's provision on parallel importation complied with TRIPS, the compulsory licensing provision was criticized for being vague and excessively broad. It lacked crucial limitations mandated by TRIPS, thus posing a significant threat to the pharmaceutical industry in the United States.⁹

IV. Doha Declaration on the TRIPS Agreement and Public Health.

In the 1990s, the HIV/AIDS epidemic became a significant health crisis in developing and underdeveloped countries. Limited access to treatment was a major issue, with only a small fraction of patients receiving the necessary medicines.¹⁰ The high cost and limited availability of HIV/AIDS and antiretroviral medicines posed significant barriers to treatment in low and middle-income countries. This problem extended beyond HIV/AIDS to other diseases like tuberculosis and malaria, where treatment rates were also low in developing nations.

The exorbitant prices of patented HIV/AIDS and antiretroviral medicines made them unaffordable for impoverished countries, raising concerns about the negative impact of the TRIPS Agreement on public health.¹¹ South Africa's efforts to ensure access to generic drugs, including antiretrovirals, through the Medicines and Related Substances Control Amendment Act of 1997 faced legal challenges from the United States. These concerns were addressed at the World Trade Organization's (WTO) Ministerial Conference in Doha, Qatar, leading to an agreement among all WTO members on the application of the TRIPS Agreement to public health.

⁸ Duane Nash, "South Africa's Medicines and Related Substances Control Amendment Act of 1997", *BTLJ* (2000):485.

⁹ *Ibid.*

¹⁰ UNAIDS, 2004 *Report on the Global AIDS Epidemic* (UNAIDS 2004)

¹¹ Keith E. Maskus, "The Role of Intellectual Property Rights in Encouraging Foreign Direct Investment and Technology Transfer," *Duke Journal of Comparative & International Law* 9 (1998): 109-161.

The Doha Declaration on the TRIPS Agreement and Public Health, issued in 2001, was a ministerial-level proclamation that contained important provisions for interpreting and implementing Article 31 of the TRIPS Agreement. The declaration explicitly recognized the need for a positive and mutually reinforcing connection between the intellectual property system and access to medicines. It aimed to address concerns about the potential impact of the TRIPS Agreement on public health, particularly access to patented medicines, and ultimately resulted in amendments to TRIPS.

The Doha Declaration includes general statements about the relationship between the TRIPS Agreement and the protection of public health. It clarifies the flexibilities embedded in the TRIPS Agreement and provides instructions for further actions. Member countries need to incorporate these provisions into their domestic laws to effectively utilize the flexibilities outlined in the declaration.

A. Scope of the Doha Declaration

The Doha Declaration encompasses seven paragraphs, with the first paragraph establishing the scope of its application. It recognizes the serious public health challenges faced by many developing countries and least developed countries (LDCs), specifically highlighting issues related to HIV/AIDS, tuberculosis, malaria, and other epidemics. While the declaration explicitly mentions these diseases, its scope extends beyond them, encompassing a broader range of public health concerns.¹²

B. General statements

The general statements in the Doha Declaration offer important guidance to individual WTO members and dispute settlement bodies. Paragraph 2 emphasizes the need for the TRIPS Agreement to be considered within the broader context of national and international efforts to address public health challenges. Paragraph 3 acknowledges the significance of intellectual property protection in fostering the development of new medicines while recognizing concerns about its impact on prices. In Paragraph 4, it is acknowledged that the TRIPS Agreement does not prevent members from taking measures to safeguard public health. It affirms that the agreement should be interpreted and implemented in a manner that supports members' right to protect public health and promote access to medicines. The declaration reasserts members' entitlement to utilize the flexibility provided by the TRIPS Agreement for this purpose.

The Australia - Tobacco Plain Packaging dispute panels (DS435, 441, 458, 467) highlighted that the Doha Declaration underscores the broad latitude members have to implement measures for public health protection, particularly regarding the term "unjustifiably" in Article 20 of the TRIPS Agreement.¹³

C. Classification of flexibilities

The fifth paragraph of the Doha Declaration provides clarifications regarding the flexibilities within the TRIPS Agreement while upholding member commitments. It acknowledges that customary rules of interpretation of public international law should be applied to the provisions of the TRIPS Agreement, considering its overall objectives. The declaration recognizes the right of members to grant compulsory licenses and the freedom to determine the grounds for issuing such licenses. It also acknowledges the members' authority to determine what qualifies as a national emergency or other circumstances of extreme urgency, including public health crises like HIV/AIDS, tuberculosis, malaria, and other epidemics.¹⁴

Regarding the exhaustion of intellectual property rights, the Doha Declaration clarifies that each member has the freedom to establish its own regime for exhaustion without facing challenges, as long as it complies

¹² Hestermeyer, Holger P. "The Doha Declaration and Access to Medicines: Where Do We Stand?" *European Journal of International Law* 15, no. 5 (2004): 891-908.

¹³ Panel Reports, *Australia – Tobacco Plain Packaging*, para. 7.2348

¹⁴ Suerie Moon, "Medicines as Global Public Goods: The Governance of Technological Innovation in the New Era of Global Health," *Global Health Governance* 2, no. 2 (2009): 1-23.

with the most-favoured-nation (MFN) and national treatment provisions of the TRIPS Agreement (Articles 3 and 4).

Although the TRIPS Agreement briefly mentions national emergencies or other circumstances of extreme urgency in relation to compulsory licensing (Article 31(b)), this reference only indicates that, in such situations, the requirement to seek a voluntary license is not applicable. The Doha Declaration affirms that it is the prerogative of each member to determine what constitutes a national emergency or other circumstances of extreme urgency, including public health crises.¹⁵

Furthermore, paragraph 6 of the Doha Declaration acknowledges that WTO members lacking sufficient or no manufacturing capacities in the pharmaceutical sector may face challenges in effectively utilizing compulsory licensing under the TRIPS Agreement. It directs the Council for TRIPS to find a prompt solution to this issue and report to the General Council by the end of 2002.

D. Transfer of technology

In the initial portion of Paragraph 7, the Doha Declaration reconfirmed the commitment of developed countries to provide incentives to their enterprises and institutions for facilitating technology transfer to least developed countries (LDCs) in accordance with Article 66.2 of the TRIPS Agreement.¹⁶

E. Extension of transition periods for LDCs

In the latter part of Paragraph 7, it was agreed that least-developed country members would not be obligated to implement or enforce the provisions of Sections 5 and 7 of Part II of the TRIPS Agreement, specifically regarding pharmaceutical products, until January 1, 2016. This decision was made without prejudice to the right of least-developed country members to seek additional extensions of the transition periods as allowed under Article 66.1 of the TRIPS Agreement. The Council for TRIPS was instructed to take the necessary steps to implement this decision in accordance with Article 66.1 of the TRIPS Agreement.

F. Follow-up

Following the instructions outlined in the Doha Declaration, two specific decisions were made regarding further work to be undertaken in the TRIPS Council:

The Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health was adopted by the General Council on August 30, 2003. This decision introduced a waiver that removed restrictions on exports under compulsory licenses to countries lacking pharmaceutical manufacturing capabilities. It established a special compulsory licensing system, known as the "Paragraph 6 System," which allowed for the export of pharmaceuticals to countries in need.

The Decision on the Extension of the Transition Period under Article 66.1 of the TRIPS Agreement for Least Developed Country (LDC) Members for Certain Obligations with respect to Pharmaceutical Products was adopted by the TRIPS Council on June 27, 2002. This decision granted LDCs an extension of the transition period for fulfilling obligations related to the protection of pharmaceutical patents and test data until January 1, 2016. Subsequently, the transition period for LDCs was further extended until January 1, 2033, through the Decision on the Extension of the Transition Period adopted on November 6, 2015.

Additionally, the Decision on Least-Developed Country Members Obligations under Article 70.9 of the TRIPS Agreement with respect to Pharmaceutical Products was adopted by the General Council on July 8,

¹⁵ Antony Taubman, Hannu Wager, and Jayashree Watal. *A Handbook on The WTO TRIPS Agreement* (Cambridge University Press, 2012).

¹⁶ Abbott, Frederick M., and Jerome H. Reichman. "The Doha Round's Public Health Legacy: Strategies for the Production and Diffusion of Patented Medicines Under the Amended TRIPS Provisions." *Journal of International Economic Law* 13, no. 4 (2010): 799-833.

2002. This decision stated that LDCs were not required to grant exclusive marketing rights to pharmaceuticals that were the subject of a patent application until January 1, 2016. The period for LDCs to fulfil these obligations was further extended to January 1, 2033, through the Decision on Least Developed Country Members adopted on November 30, 2015, covering Article 70.8 and Article 70.9 obligations.

G. Special compulsory licensing system for pharmaceutical exports

Paragraph 6 of the Doha Declaration addressed the issue faced by countries with limited pharmaceutical manufacturing capabilities in effectively utilizing compulsory licensing.¹⁷ The TRIPS Council was instructed to find a solution to this problem, resulting in the establishment of a special compulsory licensing system.

The General Council adopted the Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health on August 30, 2003.¹⁸ This decision provided a waiver under certain circumstances, exempting exporting members from the obligation to predominantly supply their domestic market under Article 31(f) of the TRIPS Agreement. It also waived the requirement for importing members to provide adequate remuneration to the patent holder under Article 31(h). However, these waivers were temporary in nature.

To create a permanent solution, an amendment to the TRIPS Agreement was reached on December 6, 2005.¹⁹ This resulted in the adoption of the Protocol Amending the TRIPS Agreement, which introduced a new Article 31bis. The 2005 Protocol, which entered into force on January 23, 2017, allowed members to benefit from the same flexibilities, regardless of whether they had accepted the Protocol or continued to operate under the 2003 Decision.

Article 31bis provides three distinct derogations from the obligations set out in Article 31 regarding pharmaceutical products.²⁰ These derogations address public health problems in importing countries and legal challenges in exporting countries. They exempt exporting members from the obligation to predominantly supply the domestic market and modify the requirement for adequate remuneration. Additionally, they facilitate the export of products manufactured or imported under a compulsory license within regional trade agreements (RTAs) consisting of at least half LDC membership.

The special compulsory licensing system covers patented products, products manufactured through patented processes, active ingredients necessary for their production, and diagnostic kits needed for their use in addressing public health problems. Eligible importing members include LDCs and other members that notify the TRIPS Council of their intention to use the system.

To prevent diversion, safeguards were implemented, including conditions attached to compulsory licenses, specific labelling or marking of products, and measures to prevent re-exportation. All members are required to provide legal means to counter the importation and sale of diverted products.

While accepting the 2005 Protocol is distinct from implementing the system in domestic legislation, many WTO members, particularly those with pharmaceutical export capacities, have adopted implementing laws or regulations to incorporate the special compulsory licensing system into their legal frameworks.

¹⁷ Oh, Cecilia. "The Doha Declaration Ten Years On: Taking Stock of Its Impact on Access to Medicines." *American Journal of Law & Medicine* 38, no. 2-3 (2012): 501-523.

¹⁸ World Health Organization, "Globalization, TRIPS and Access to Pharmaceuticals," *WHO Policy Perspectives on Medicines*, no. 3, March 2001.

¹⁹ Gostin, Lawrence O., and John-Arne Røttingen. "The Doha Declaration on TRIPS and Public Health: A Good Start." *Journal of the American Medical Association* 291, no. 21 (2004): 2613-2616.

²⁰ C. P. Chandrakanth, "Compulsory Licensing: Implications for Pharmaceutical Innovation," *Journal of Intellectual Property Rights* 19 (2014): 317-324.

V. Flexibilities under Indian Patent Regime – The Patents Act, 1970

Under the Indian Patents Act, 1970, there are several flexibilities or limitations on patent rights. These include:

- i. Compulsory licenses (Section 84): This allows the granting of licenses for the production of patented inventions without the consent of the patent owner, in cases of national emergency, public non-commercial use, or when the patented invention is not being worked sufficiently in India.
- ii. Licensing of related patents (Section 91): This provision allows for the licensing of related patents, where the exploitation of one patent depends upon the use of another patent.
- iii. Special provision for compulsory licenses on notifications by the Central Government (Section 92): The Central Government can notify that compulsory licenses may be granted for the manufacture and export of certain products to address public health problems, subject to specific terms and conditions.
- iv. Bolar Exemption (Section 107A): This provision allows for the use of patented inventions solely for research and development purposes, including conducting pre-commercialization studies, seeking regulatory approvals, or conducting experiments necessary to produce generic versions of patented drugs.
- v. Compulsory license for the export of patented pharmaceutical products in certain exceptional circumstances (Section 92A): This provision enables the grant of compulsory licenses for the manufacture and export of patented pharmaceutical products to countries facing insufficient or no manufacturing capacity in the pharmaceutical sector to address public health problems. The Controller may grant such licenses based on an application and specified terms and conditions.

It is important to note that these provisions were introduced to align Indian legislation with the Doha Declaration, which addresses public health and access to medicines.

VI. Conclusion

Regarding the operation of the special compulsory licensing system, there has been one reported case to the TRIPS Council as an example. In 2007, Rwanda notified the TRIPS Council of its intention to import a pharmaceutical product for HIV/AIDS treatment from Canada under the system. Canada subsequently issued a compulsory license to a domestic manufacturer, allowing the production of the medicine for export to Rwanda.

However, some members of the TRIPS Council have expressed concerns about the complexity and bureaucracy of the system. They believe that it has not effectively addressed public health problems in developing countries, as evidenced by its limited use. On the other hand, some members argue that the successful shipment of medicines from Canada to Rwanda demonstrates the system's effectiveness. They believe that the system's impact should be measured by improved access to affordable medicines, rather than the number of compulsory licenses granted.

It is important to note that the Doha Declaration, which addresses public health and access to medicines, does not cover all aspects of flexibility under the TRIPS Agreement. It does not address exceptions to patent rights or the protection of data submitted for the registration of pharmaceutical and agrochemical products. Additionally, it does not explicitly refer to the discretion that member countries have in determining patentability standards to prevent strategies that aim to extend patent protection in the pharmaceutical field.

DIGITAL NOMADS IN DUBAI- BEGINNING TO A NEW ERA OF RESIDENCY

Chandni Malhotra*

Abstract

I began collecting information on remote workers about two years ago. The more I read, the more curious I became; yet, there was so much ambiguity, so much conflicting testimony, and so many viewpoints of the remote workers I came across in Dubai and Europe during my visits that I thought someone was needed to tear away this veil of mystery. Thus, began my voyage of discovery about who are remote workers, why they go far away from home to work for the employer who is still in the home country, and how COVID-19 changed the entire ballgame of a 9-5 desk job in a designated office. Considering the fact that digital nomads form a new trend based on digital requirements for their work, a great deal of the material I referred to for my research was obtained from digital sources, including government websites and data. In the meantime, partly through personal efforts, I was able to obtain different viewpoints from my friends and acquaintances from India who are currently based in cities like Dubai, Bali, Croatia, and Portugal as digital nomads and enjoying their work and personal lives like never before. This short article is expected to give an outlook on the digital nomadic era and how the city of Dubai serves as an ideal location for those desiring to apply for such residency.

Keywords: *Digital Nomad, Remote Workers, Residency, Virtual Work Visa, United Arab Emirates*

I. Concept of Remote Working

While the first home is focused on fundamental household living with a set pattern, the second home is a place about relaxing, enjoying, and expanding in life. With the presence of advanced infrastructure, global connectivity and pro-business ecosystem, the virtual working Programme gives many cities on the planet a significant opportunity to enhance business practices and maximize growth. Recognizing the potential to boost their flagging tourism industries, countries from Croatia to Spain and cities from Dubai to Bali are making it easier for people to gain temporary residency while working for a foreign company. Not only does this help fill the low-season gaps in tourism-based destinations, but it also offers non-EU and Asian citizens peace of mind and the chance to legally work remotely. Another lucrative factor of digital- based remote working, especially in the EU, is the opportunity for visa-free travel to all 27 Schengen countries.

For the remote workers planning to work amidst stunning nature and a low cost of living, countries like Albania¹, Portugal come to the rescue² in fact, in Ponta do Sol, on the coast of Madeira Island, remote workers have set up a dedicated digital nomad village.³ If you're looking for affordable living and fairytale castles, the Czech Republic offers digital nomad- based residency for up to one year, while for island-hopping and year-round sun, Greece is a great option too⁴. Remote working from anywhere across the world depends upon various factors like the suitability of laws, infrastructure, life conditions, etc. in place to relocate to and work remotely from. All such factors may be categorized under three main headings, as mentioned below:

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¹ Law No. 25/2022 on startups support and development.

² Residency. (n.d.). Visa. <https://vistos.mne.gov.pt/en/national-visas/necessary-documentation/residency>

³ Portugal welcomes hundreds of digital nomads under new visa scheme. Here's how it works |

Euro news. <https://www.euronews.com/travel/2023/01/26/digital-nomads-will-be-able-to-live-and-work-in-Portugal-full-time-with-this-new-visa>

⁴ Law N° 4251/2014 enacting the Code of Immigration and Social Integration, and other Provisions

- i. Costs and Infrastructure: Home Office Room Rent, Accommodation Availability, Income and Tax, Internet Speed and Connectivity, Rate of Immigration, Remote Working Infrastructure.
- ii. Living Conditions: Happiness Index Ranking, COVID-19 Vaccination Rate, Minimum Monthly Wages, Healthcare Facilities, Culture & Leisure, Weather, and Quality of Air.
- iii. Nature of Laws and Freedoms/Rights Available to People: Safety, Freedom, and Other Individual Rights.

As per the new World Employment and Social Outlook, Trends 2023, published by the ILO in 2023, the three components of investment, technological progress, and workforce composition broadly viewed as "human capital" cannot be separated. New digital technologies such as artificial intelligence (AI) could play an important role in reviving productivity growth.⁵ This brings me to introducing Dubai as one of the leading destinations for remote workers in 2023.

II. UAE's journey from Golden Visa to remote work-based visa

Dubai, a city where just looking at the Burj Khalifa makes you dream big and reach heights, is undoubtedly sui generis in all aspects, especially when it comes to quality living. The city's most prominent mall, Dubai Mall, is one of the best locations to go for a day of shopping and indoor activities; it grants access to both the Dubai Aquarium and the Burj Khalifa. The city's impartial regulations aim at protecting and promoting the interests of residents, traders, and investors. The laws of the United Arab Emirates aim to position the country as one of the world's leading destinations for investors, traders, tourists, residents, and digital nomads, synonymous with innovation, trust, and satisfaction, to create a Dubai environment guaranteeing the rights of all stakeholders and envisioning becoming a global leader in attracting investments, talents, and technology.

While the wait for permanent residency in the UAE is still going on, the golden visa expansion scheme introduced in 2021 has provided respite for many, making the UAE a consistent attraction for the world. Under this service, people who meet the conditions can apply for long-term residency for a period of five to ten years. This new system in the UAE allows residents, foreign expatriates, and their families to come to work, live, and study in the country and to have the possibility of enjoying a long-term residency without the need for a sponsor within the country, and it is automatically renewed. Furthermore, this system enhances the environment that supports business growth and success in the country.⁶

With the objective of attracting talent and retention and creating new unconventional jobs, the Cabinet of the United Arab Emirates even passed Resolution No. 27 for 2020 regarding the remote work system in the federal government and joined the list of countries offering remote working options to their citizens who were federal employees. The resolution was applicable only to current and future Emirati employees who are eligible to work remotely based on set criteria.

III. Introduction of a virtual work visa in Dubai

On October 14, 2020, for the first time, Dubai launched a unique residency program for remote workers from outside the country, enabling those working professionals to live in Dubai as they continued to work for their overseas employers. The program is intended to enable overseas remote working professionals to live in Dubai while continuing to serve their employers in their home country.

On March 21, 2021, the UAE cabinet adopted a new remote work visa to enable employees from all over

⁵ International Labour Office. (2023). *World employment and social outlook: Trends 2023*. International Labour Office.

⁶ Home - federal authority for identity, citizenship, customs & port security. (2020, May 31). Federal Authority for Identity, Citizenship, Customs & Port Security -; Federal Authority for Identity and Citizenship. <https://icp.gov.ae/en/>

the world to live and work in the UAE for one year and approved a multiple-entry tourist visa for all nationalities.⁷ None can deny that unlike any other city in the world, remote workers can take advantage of the emirate's strong digital infrastructure, robust connectivity, safe and high-quality lifestyle, global networking opportunities, and zero income tax for individuals, all at the same time.

IV. Dubai: An Ideal Location for Remote Workers

Dubai has been recognized for setting a global model for dealing with COVID-19 pandemic. The emirate, post the pandemic, has implemented robust safety and hygiene protocols that enabled the reopening of most sectors and destination offerings across the city, including hotels, restaurants, attractions, water and theme parks, beaches, shopping malls, schools, and universities.

Dubai is uniquely positioned to offer a safe, dynamic lifestyle opportunity to these digitally savvy workers and their families while they continue to work remotely, whether it is for a couple of months or an entire year. This proposition can be well justified in the light of Dubai's Digital Strategy, which aims to digitalize all aspects of life in Dubai. As of 2023, the digitization rate of government services in Dubai stands at 99.5 percent, with the objective of a paperless government achieved at 100 percent.⁸

The launch of the Remote Work Visa initiative is a testament to the emirate's ability to quickly adapt to changing market conditions and introduce new measures that improve the ease of doing business and enhance its economic competitiveness. The move also reflects Dubai's ability to create new opportunities for entrepreneurs and professionals to benefit from the city's advanced digital infrastructure and realize their ambitions in a vibrant, innovation-driven business environment.⁹

V. Smooth Legal Processing

The General Directorate of Residency and Foreigners Affairs, Dubai, provides services pertaining to entry permits and residence permits to all segments of society, including visitors and residents of the UAE, where it is possible to complete the procedures for entry permits and residence permits in record time. Through these services, the Directorate strives to enhance the leadership and competitiveness of the United Arab Emirates and the Emirate of Dubai at the global level, which is reflected in the improvement of the standard of living in the country.¹⁰

As highlighted by Lieutenant General Mohammed Ahmed Al Marri, the Director General, the General Directorate of Residency and Foreigners Affairs in Dubai has been keen on harnessing all available resources to provide the best services to citizens and residents on the land of United Arab Emirates. and complete all their transactions related to residency, naturalization, ports, and violators with full transparency and clarity, in a manner that meets their aspirations and satisfies them.

VI. Who qualifies for a Remote Work Visa in Dubai?

To apply for the remote work visa, the Cabinet considers two types of remote work: full time and part-time. While the employee who can, at the request of his employer, divide work time between the original workplace and the remote workplace in equal or different proportions per day, week, or month qualifies

⁷ (N.d.). Retrieved November 10, 2023, from [http://file:///C:/Users/hp/Downloads/Cabinet%20Resolution%20No%2027%20for%202020%20Regarding%20Remote%20Work%20System%20in%20the%20Federal%20Government%20\(1\).pdf](http://file:///C:/Users/hp/Downloads/Cabinet%20Resolution%20No%2027%20for%202020%20Regarding%20Remote%20Work%20System%20in%20the%20Federal%20Government%20(1).pdf)

⁸ Dubai's Digital Strategy | The Official Portal of the UAE Government)

⁹ Dubai launches unique virtual working Programme for overseas professionals. (n.d.). Gov.ae. Retrieved November 10, 2023, from

<https://www.dubaitourism.gov.ae/en/newsroom/press-releases/virtual-working-programme>

¹⁰ General directorate of Residency and foreigners' affairs-Dubai. (n.d.). Gov ae. Retrieved November 10, 2023, from <https://gdrfad.gov.ae/en>

under the partial remote work category, the employee who, on the other hand, can perform the job completely from outside the original workplace is considered to be a full-time remote worker.¹¹

A foreigner who takes part in remote employment, also called virtual work, is given a residence visa without employment, which entitles him to remain in the country for sixty days from the date of entry until the end of the requirements for granting residence. Applicants will need the following:

- i. Passport with a minimum of six months validity
- ii. Health insurance with UAE coverage validity
- iii. Employment Proof

A. For employees

Proof of employment from a current employer with a one-year contract validity, a minimum of US\$3,500 per month in salary, last month's pay slip, and three preceding months' bank statements.

B. For business owners

Proof of ownership of the company for one year or more, subject to extension, with an average monthly income of US\$3,500 per month or its equivalent in foreign currencies and 3 preceding months' bank statements.

- iv. Proof of work or employment outside the United Arab Emirates and that the work is conducted remotely.
- v. If applying for permits for family members, applicants are required to submit their valid health insurance and passport along with the fee payment for each member.

VII. Procedure to Apply¹²

The government gives both digital and physical options to remote workers to apply for residency on the basis of remote working. The first one is via digital channels, which is a website-based smart application. The steps involved are simple:

- i. Log in to the smart services system through your UAE Pass or username.
- ii. Search for the service to be applied for.
- iii. Fill in the application data.

The second way of applying for residency is to visit the nearest Amer Service Center, also called the Customer Happiness Center, get the automated turn ticket, and submit the application.

VIII. Validity or duration of the Visa¹³

Like most European countries, the virtual worker has a one-year, extendable period of residence, and the remote worker can sponsor his family for the same period. Once the visa is issued, the digital remote

¹¹ (N.d.-b). Retrieved November 10, 2023, from [http://file:///C:/Users/hp/Downloads/Cabinet%20Resolution%20No%2027%20for%202020%20Regarding%20Remote%20Work%20System%20in%20the%20Federal%20Government%20\(2\).pdf](http://file:///C:/Users/hp/Downloads/Cabinet%20Resolution%20No%2027%20for%202020%20Regarding%20Remote%20Work%20System%20in%20the%20Federal%20Government%20(2).pdf)

¹² Visa issuance (virtual work). (n.d.). Gov. ae. Retrieved November 10, 2023, from <https://www.gdrfad.gov.ae/en/services/64154a31-ec6d-11ec-140b-0050569629e8>

¹³ Supra

workers are entitled to access to all the standard services that residents benefit from, including telecoms, utilities, and schooling, while also connecting to a global hub and a skilled workforce composed of numerous nationalities. All applications (new applications and renewals) will be reviewed and processed by the General Directorate of Residency and Foreigners Affairs - Dubai (GDRFAD).

According to a study by Nestpick,¹⁴ which highlights the destinations that are most attractive to digital nomads in search of a new home according to different law and livability factors such as costs, infrastructure, weather, and freedom, Dubai stands on the second rank in the Work- from-Anywhere Index.

IX. Conclusion

As we look to the future of work, it seems clear that remote working will continue to be popular for at least another ten years. As there are more remote workers and digital nomads, talented people all around the world are entering a new period of potential. A truly global labor market with contract workers, full-time employees, company owners, content creators, IT experts, and freelancers have emerged as a result of the popularity of remote work. Flexibility, work-life balance, and improved opportunities for learning and progression are just a few of the ways that remote work may change how people operate.

¹⁴ The Work-from-Anywhere Index. (n.d.). Nestpick.com. Retrieved November 10, 2023, from <https://www.nestpick.com/work-from-anywhere-index/>

JUSTICE FOR VICTIMS AND THE RIGHT TO HEALTH – EXAMINING LANDMARK ENDOSULFAN JUDGMENT IN INDIA.

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Abstract

The concepts of healthcare and public health are closely linked and contribute to the realisation of the Right to Health, as established by several decisions in India's highest court. Right to Health is a basic human right which has been given an important status in International by the World Health Organisation. The right to health has been recognised and adapted by many countries in their Laws and Policies in light of the International Status and worldwide importance. India too has recognised the Right to Health albeit a little differently, the Right to Life and Liberty has been enshrined as a fundamental right in the Part III of the Constitution of India through the Article 21. Right to Health has not been declared as a fundamental right in the Constitution, but perceived as an extension of Article 21 by various precedents of the highest court of Indian judiciary, The Supreme Court of India. According to the Article 21 of the Indian Constitution, the right to life and liberty hold equal primacy to all the people of the State and the Supreme Court has acknowledged that the right to health is a crucial component of the right to life. Judicial Precedents are another important source of Law and the Apex Court has been instrumental in delivering landmark judgements which have made high Impact in aiding the lawmakers to pass concise laws and also the executive to execute these laws more efficiently.

In a case involving the use of Endosulfan, the Supreme Court ordered the state government to consider the offering of medical facilities and treatment for chronic illnesses brought on by its effects. The Supreme Court also mandated that those suffering victims receive prompt assistance and rehabilitation. These steps showed how dedicated the Supreme Court is to defending the right to health as an essential human right. The Supreme Court acknowledged that, in accordance with Article 21 of the Constitution, having access to healthcare is a fundamental human right. The author analyses this case in which the Apex Court made an observation strongly condemning the inactions of the State Government in following the instructions of the Supreme Court in its earlier order and subsequently in the order dated 18 July 2022. In extension to this analysis, the author also analyses the access to health care and its implementation, public health and its role and the extent of importance of Right to Health as a fundamental right vis-à-vis the Right to life and personal liberty under the Indian Constitution and the various dimension that it engulfs in realisation of the same.

Keywords: *Constitutional Law, Access to healthcare, Right to Health, Healthcare, Case Analysis, Endosulfan Victims, Compensation.*

I. Introduction

Healthcare and Public Health are interconnected concepts that help in achieving the Right to Health, that has been envisaged through a number of judgments in India by its Apex Court. Access to health is a primary duty that has to be fulfilled by the state through its health policies and also healthcare norms that ultimately point towards its citizens secure 'Health for All' which has been emphasised by the World Health Organisation.¹ Enhanced accessibility can be attained through exerting influence on health policies at

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¹ World Health Organization. "Targets for health for all: Targets in support of the European regional strategy for health for all." Targets for health for all: Targets in support of the European regional strategy for health for all. 1986.

several levels, including local, regional, and national, through active engagement by the state in establishing such institute and arrangement of priorities, proper programme planning, and wide budget allocation.² These are the aspects that are workable at the levels of legislation and also the reflection of which has been made by the executive, who execute these laws to fulfil the aims of the legislature through such policies. However, Legislature cannot make a call all the time with reference to certain cases that are not predictable, one such case was the Kasaragod Endosulfan tragedy.³ This can be seen as something which made people and organisations even go to the extent of blaming the state government of Kerala as careless.⁴ A group of petitioners who wanted compensation for themselves and other Endosulfan victims thus brought a case before the Apex Court in Writ Petition (Civil) No. 213 of 2011, which primarily concerned largely the Contempt Jurisdiction of the Supreme Court more fully of the order dated 10 January 2017 which directed the state government of Kerala to release the complete amount of undisbursed amount of Rs. 5,00,000 (Rupees Five Lakhs) each to each of the victims. This order also addressed the usage of Endosulfan, a poisonous insecticide that has seriously harmed both humans and the environment.⁵ The Supreme Court of India issued a landmark order on the failure of the State Government of Kerala to provide for the enforcement of the compensation provided to the victims of the horrifying incident surrounding the spraying of the poisonous insecticide upon the cashew crops in the Kasaragod district of Kerala State in India. In a civilised society the right to live with dignity and lead a healthy life till the very end is recognised as basic human right vis-à-vis the Article 21 of the Constitution of India which provides for the fundamental right of life and liberty. The order instructs the State Government to offer prompt relief and rehabilitation to victims who are suffering from permanent illnesses resulting from its consequences and recognises the right to health as a crucial component of the right to life under Article 21 of the Constitution of India.

II. Endosulfan, how was it banned across India

Endosulfan is a chlorinated hydrocarbon of the cyclodiene group which is primarily used as a broad-spectrum insecticide across various crops including tea, coffee, fruits and vegetables. It acts as a contact poison for a wide variety of mites and insects and can also be used as a wood preservative⁶. Endosulfan has been widely used to manage pests in the agriculture due to its relatively low cost and its effectiveness against the pests to the agricultural crops, commercial or otherwise.⁷ It is applied as a spray or sprinkled as dust, which is inhaled or absorbed through skin by these pests. It works by disrupting the nervous system of the insects and mites causing paralysis in them and eventually leading to their death.

Endosulfan is dangerous since it can lead to severe health issues in both people and animals. Endosulfan is a persistent organic pollutant (POP) with a long half-life that can linger in the environment and build up in the food chain⁸. Endosulfan exposure at various levels can cause short term effects such as tremors, nausea, dizziness, headache and vomiting. In serious cases it can cause severe convulsions and loss of consciousness. These effects are seen upon exposure for a few hours and the effects can last for several days. Long term effects of Endosulfan are more severe in nature and are irreversible which include cancer,

² Gulzar, Laila. "Access to health care." *Image: The Journal of Nursing Scholarship* 31.1 (1999): 13-19.

³ <https://www.thehindu.com/news/national/kerala/endosulfan-kerala-planning-health-package-for-palakkad/article6221988.ece> (last accessed 03.09.2023)

⁴ <https://www.thehindu.com/news/national/kerala/martyrs-of-the-endosulfan-tragedy/article2709183.ece> (last accessed 03.09.2023)

⁵ <https://www.downtoearth.org.in/coverage/health/tracking-decades-long-endosulfan-tragedy-in-kerala-56788> (Last accessed, 03.09.2023)

⁶ Ahmad, K. S. (2019). Adsorption removal of endosulfan through *Saccharum officinarum* derived activated carbon from selected soils. *Journal of Central South University*, 26(1), 146-157.

⁷ Quijano, R. F. (2000). Risk assessment in a third-world reality: an endosulfan case history. *International Journal of Occupational and Environmental Health*, 6(4), 312-317.

⁸ Svartz, G. V., Wolkowicz, I. R. H., & Coll, C. S. P. (2014). Toxicity of endosulfan on embryo-larval development of the South American toad *Rhinella arenarum*. *Environmental toxicology and chemistry*, 33(4), 875-881.

birth defects, neurological diseases, reproductive and developmental issues/ailments in children, as well as other chronic ailments. It is known to affect the nervous system, immune system and cause severe kidney and liver damages.

Due to its detrimental impacts on both human health and the environment, it has been banned in numerous nations. Exposure to Endosulfan can happen when someone inhales the polluted/exposed air or dust, consumes the contaminated food or water, or comes into contact with contaminated soil or crops through their skin. It is significant to remember that depending on the amount and length of exposure to Endosulfan, different effects may result. People who live close to agricultural areas where Endosulfan is used are more at risk of exposure which may lead to the short term or long-term effects which are severe and irreversible in nature. Endosulfan however, should either be used with caution or not at all as it clearly poses a serious risk to human health. Therefore, it came across to be banned from usage in many parts of the Country.

III. Critical Analysis of Baiju K. G. v. Dr. V. P. Joy and others

A Contempt petition (C.P. No. 244/2021) filed in a Writ Petition (W.P. No. 213/2011) by the persons affected by Endosulfan whose contention was the use of toxic pesticide Endosulfan led to the spread of physical and mental ailments amongst the residents in Kasaragod district, Kerala State. The Supreme Court on 10.01.2017 mandated that impacted parties receive compensation within three months. Each person would receive Rs. 5 lakhs in compensation. A team of government representatives was also mandated by the Court to go to the houses of 3704 victims who had not yet received compensation. The team discovered that of these victims, 102 were bedridden, 326 had mental disabilities, 201 had physical disabilities, 119 had cancer, and 2966 were classified as having lingering effects. This demonstrates the extent of the devastation Endosulfan causes.

The Court in the above case observed that although being prohibited in many other nations due to its detrimental effects on human health and the environment, Endosulfan has been used for many years in Kerala. The Court also stated that numerous reports had shown how Endosulfan had a negative effect on people, animals, and crops. While aware of the detrimental consequences of Endosulfan on people's health for five years, the state government came under fire for doing practically nothing. The Court mandated that those who are dealing with chronic illnesses brought on by its consequences receive timely relief and rehabilitation. The ruling is crucial because it affirms that, in accordance with Article 21 of the Constitution, having access to healthcare is a fundamental human right⁹. Additionally, it emphasizes how crucial it is to hold government officials responsible for respecting this right and delivering justice for people who have been harmed by hazardous substances like Endosulfan.

The court also saw the need for granting compensation on an urgent basis. It reiterated its decision in *Nilabati Behera v. State of Orissa*¹⁰ which dealt with the basis of awarding compensation in public law proceedings, where the onus of a public wrong will be attributed to the state in case of its failure to protect the fundamental rights of the citizen. It made a distinction to the position of these compensations distinctly different from the damages for civil actions in private law. This public law compensation is seen as a monetary amend for the wrong done due to the breach of public duty by the state resulting in the violation of fundamental rights of its citizens.¹¹

The author feels that the Supreme Court has although made huge strides in upholding the Right to Health per se, it has failed to adequately see the devastating impact the usage of Endosulfan has had in the State of

⁹ Chouri, D. (2012). Constitutional Perspective of Right to Health in India: An Analysis. *The IUP Law Review*, 2(1), 46-57.

¹⁰ Smt. Nilabati Behera Alias Lalit v. State of Orissa And Ors (1993) AIR 1960, 1993 SCR (2) 581

¹¹ Chayes, A. (1975). The role of the judge in public law litigation. *Harv. L. Rev.*, 89, 1281

Kerala, an attribution of usage for more than two decades has caused irreversible ailments in many victims and new-borns are affected by this as well. Apart from the effects that devastated the lives of many people, there has been irreversible damage upon the ecology and the wildlife as well. Many species of animals and reptiles have vanished from the regions where the extensive usage of Endosulfan had been made. Some of the migratory species of butterflies which as Class I species, have been vanished from certain areas which reports of Extensive Endosulfan use.¹²

IV. Conclusion and Suggestions

This Public Interest Litigation proved to be a step in the right direction towards offering relief to people who have suffered because of the usage of Endosulfan is the Court's decision to order the State Government to give compensation to affected persons within three months. The Court's directive that the State Government consider funding medical facilities and continuous care for lifetime illnesses brought on by its effects is especially noteworthy since it acknowledges that the effects of dangerous chemicals can last a long time and necessitate ongoing support. The research team's findings demonstrate the extent of Endosulfan's damage.

Therefore, the Supreme Court opined that the failure to comply with the order amounts to the compounding of the violation of fundamental rights of such affected persons and reiterated that the right to health is an integral part of right to life under the Article 21 of the Indian Constitution. The Chief Secretary has also been tasked by the Supreme Court with ensuring that the directive regarding the provision of medical facilities and treatment for Endosulfan victims is faithfully carried out. The Court further mandated that the cost of Rs. 50,000 be paid to the eight petitioners. These actions show how committed the Court is to holding the government responsible for protecting the right to health and securing justice for people who have been harmed by dangerous drugs like Endosulfan. It is also notable that the Court decided to send a team of officials to visit the houses of victims who had not yet received compensation, because it shows how committed the Court is to seeing that justice is done.

It is the suggestion of the author that robust mechanism be made in light of directions from the Apex Court by the State Governments regarding the execution and implementations of compensations. Largely the aspect of compensation is arrived at through the Consumer Protection Act, 2019 which seems incapable of addressing the above issue as they are not Consumer Disputes. However, tortious liability of the state cannot be denied in the instant case and therefore something on the lines of a Mass Action Claims for Tortious Liability would be an apt mechanism, where the emphasis cannot lie on only the State Government, but also upon all such actors that are vicariously liable for such a disaster to take place. The Bhopal Gas tragedy and its victims have yet to see relief even today, the reason for which happens to be a failure of robust mechanism for the realisation of the compensation to the victims. Alongside this, the access to proper medication for the sustenance of life of the thousands of innocent victims is also a must. The Primary Health Care Centres and Urban Primary Health Care Centres in rural and urban areas must be the touch points for the medical facilities for these victims of this man-made tragedy. State Government and Central Governments must join hands in provision of Access to Healthcare for such victims and also provide for the speedy redressal mechanisms in providing Economic and Social relief in form of compensations and also aid in the taking care of the victims of the tragedy who cannot afford the healthcare and treatments which may even be for the entirety of the victim's life.

¹² *Supra Note 7*

AN OVERVIEW OF CHILD CARE INSTITUTIONS: NEED FOR THEIR STRENGTHENING UNDER THE JUVENILE JUSTICE SYSTEM

Neelam Faizan & Kulsum Haider*

Abstract

In India, many children do not have a stable home or family. These children need care and protection, so for this reason, Child Care Institutions (CCIs) were established under the Juvenile Justice Act throughout the country. However, it is essential to note that institutionalization must be the last resort for children, and it is one of the core principles of the juvenile justice system. Moreover, numerous studies have revealed that when children are admitted to such institutions for a long time, it has a negative impact on them. Furthermore, the country's functioning of child care institutions suffers from various flaws, and most children residing there are in deplorable conditions. This plight of children prompted the researchers to research the rights of children. This paper examined the reasons for the failure of the existing juvenile justice mechanism in discharging obligations toward children and the need for strengthening the system of child care institutions in the context of the Juvenile Justice Act, 2015. The methodology adopted by the researchers is purely doctrinal.

Keywords: *Adoption, Child Rights, Child care institutions, Juvenile Justice, Rehabilitation*

I. Introduction

In India, out of a 1.21 billion population, a rough estimate of 39% accounts for the child population (Census, 2011). Children are the most vulnerable section of society. They sometimes face unfavorable conditions and become victims of the juvenile justice system. There are different categories of children residing in the Child Care Institutions (hereinafter CCIs), inclusive of orphans, trafficked, sexually abused, victims of child pornography and child marriage, children affected by HIV/AIDS, runaways, homeless, missing, abandoned, surrendered, mentally and physically disabled children, and children affected by man-made disasters.

Historically, the other members of a joint family looked after the children without parents. CCIs existed, but mainly for the care of orphans because there have always been children who did not have any support from their families. So, the concept of an orphanage was there, which used to work as institutions for providing care and shelter. With the change in time and family structure, the nature of institutional care has undergone fundamental changes.

As per the committee report of the Ministry of Women and Child Development of India, 9689 CCIs/homes are functioning in India, of which 91% are run and managed by non-governmental organizations and only 9% are government supported (India, 2018). It has been found by the Committee that there are 7422 children in conflict with the law (hereinafter CCL), including 5617 boys, while 1805 girls, and the number of children in Need of Care and Protection (hereinafter CNCP) are 370,227, of which 199,760 are boys, 170,375 are girls, and ninety-two are transgender children (India, 2018).

CCIs were initially not defined in the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter JJ Act 2000). However, they were later added by legislation through amendment in 2015 with the new Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter JJ Act 2015). The inclusion of various categories of homes for the care and protection of children, defined under Section 2(21)

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of the JJ Act 2015 as "child care institutions," includes children home, open shelter, observation home, place of safety, special home, fit facility, and Specialized Adoption Agency recognized under this Act for providing care and protection to children, who are in need of such services," based on their needs and situation. The categorization has been done according to age, gender, and purpose of protecting their rights and rehabilitation.

II. Protection and care of children under the legislative umbrella

The Convention on the Rights of the Child (Child, 1989) has prescribed a set of standards to be adhered to by all State parties to protect the child's best interest. India acceded to this Convention on the December 11th, 1992. The mechanism for discharging obligations towards children was provided under the JJ Act, 2000. However, 2015 was a significant year in the history of child rights in India as the JJ Act 2015 was enacted with the aim of protecting the CCL and CNCP by catering to their basic needs through proper care, treatment, social re-integration, and rehabilitation in the best interest of the child. However, it is one of the most challenging tasks for these institutions. It is also important to highlight here that the number of children in need of care and protection is continuously rising; on the contrary, the adoption rate in India is meager.

Under the JJ Act of 2015, the CCIs are set up for the welfare of two categories of Children:

- i. Children in Need of Care and Protection (CNCP) (2(14)): It includes "*children that have lost parents, who are found working in contravention of the provisions of this act or labour laws, been adopted, have been abused, runaways, with special needs, who are found vulnerable and are likely to be inducted into drug abuse or trafficking, mentally ill, physically challenged, who do not have parents or have parents but they are unwilling to take care of them, who are abandoned or surrendered, and so on.*"
- ii. Children in Conflict with Law (CCL) (2(13)): it includes "*a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of the commission of such offence.*"

CCIs work differently in these two categories since the former needs protection while the latter requires both protection and change to thrive in society.

Discussing further, the care and protection given to children under the JJ Act, 2015 are categorized into institutional care and non-institutional care, following the fundamental principles of the Juvenile Justice system.

A. Institutional Care

Institutional care, also called residential care for large groups of children (Children, 2019), refers to the care, protection, development, rehabilitation, and social re-integration of children in difficult and vulnerable circumstances in an institutional setting. The child is placed in institutional care temporarily or for the long term when he is a child in conflict with the law, in an institution like an Observation Home, a place of safety, or a special home. The institutions are under the guidance and supervision of child care professionals, whose actions are governed by the standards prescribed by the national legislation protecting and impacting children. A child should be placed in institutional care as a measure of last resort (3(xii)).

In other words, these institutions provide facilities or homes for children admitted for different reasons. These facilities include shelter, food, clothing, medical, and educational needs. The duration of their stay and other facilities depend on the kind of children who are admitted. Institutions can be government-owned Homes, NGO-managed facilities, or Homes managed by religious or faith-based organizations. Some are

raised through their own resources, and some are fully or partially funded by the government. The CCIs must address the physical, psychological, emotional, social, educational, cultural, economic, and moral needs of targeted children in an age-appropriate manner.

B. Non-Institutional Care

Non-Institutional care refers to facilities and services provided to children without family or family support. It can be provided by keeping the child in a family-like environment. Various non-institutional care provisions include adoption, foster care, sponsorship, and aftercare (Bajpai). Section 3 (Chapter II) of the JJ Act, 2015¹ highlights a few principles to be followed by the central government, state government, board, committees, and other institutions. They are:

- i. Principle of best interest which means the primary consideration is the child's best interests and full development (3(iv)),
- ii. Principle of family responsibility of the biological, adoptive and foster parent of care, nurture and protection of the child (3(v)),
- iii. Principle of safety, protection from any harm, maltreatment, and abuse (3(vi), Juvenile Justice (Care and Protection) Act, 2015),
- iv. Positive measures for reducing vulnerabilities and promoting the well-being of children through an enabling environment (3(vii)),
- v. Principle of equality and non-discrimination on the grounds of sex, caste, ethnicity, place of birth, disability, equality of access, opportunity, and treatment of every child (3(x)),
- vi. Principle of repatriation and restoration (3(xiii)),
- vii. Principles of natural justice to be followed in the procedure of the juvenile justice system (3(vi), Juvenile Justice (Care and Protection) Act, 2015).

The Constitution of India, apart from the right to a life with dignity through different Articles, articulates the concern for children; Articles 15 (The Constitution of India, art 15(3), 1950), 24 (The Constitution of India art 24, 1950) as fundamental right guaranteeing special laws to be made for the protection of children and protection from abuse and exploitation; Articles 39(e) (The Constitution of India art 39(e), 1950), 39(f) (The Constitution of India art 39(f), 1950), 45 (The Constitution of India art 45, 1950), 47 (The Constitution of India art 47, 1950) as directive principles of state policy directing the state to guard the health and strength of the children; and 51A(k) (The Constitution of India art 51(k), 1950) as a fundamental duty. In India, the non-institutional approach and the rights of a child to grow up in a family or a family-based environment have been included in several policies and legislations. Apart from the Juvenile Justice (Care and Protection of Children), Act 2015; these include the Convention on the Rights of the Child, the Integrated Child Protection Scheme², The National Policy for Children 2013, The Adoption Regulations 2017³, The Foster Care Guidelines 2016⁴.

III. Juvenile Justice System in India and Child Care Institutions

'Nil Novi Spectrum', the Latin maxim, fits for the juvenile justice system, which means that nothing is new on this earth (Shekhar, 2021). In India, a child below the age of eighteen years is considered to be juvenile (Juvenile Justice (Care and Protection) Act, 2015 s 2(35)). The crime rate by juvenile (child in conflict with law) was 6.7 percent per one lakh population in the year 2020 ((NCRB)). It is most disappointing that children have always been used as a tool for the commitment of anti-social or criminal acts processed

¹ It deals with the General Principles of Care and Protection of Children.

² This scheme was introduced by the Ministry of Women and Child Development, Govt. of India (MWCD), 2009 to strengthen preventive and primitive work in child protection including non-institutional care.

³ Formulated by Central Adoption Resource Authority (CARA).

⁴ Formulated by MWCD.

through the juvenile justice system in India. The primary roles of the juvenile justice system are rehabilitation, reintegration into the community, retaining public protection, and addressing the needs and treatment (Shekhar, 2021). There are three agendas of the Juvenile justice system in India (Arghya Sen, 2021):

- i. The young offenders should not be prosecuted in court; instead, the best possible rehabilitation must be provided.
- ii. Punishment by the court must not be resorted to, and a reformatory approach must be adopted.
- iii. A child in conflict with law should be given non-punitive care through institutions and homes managed and instituted by the state government.

Several issues still need to be addressed by the juvenile justice system. The Child Welfare Committees and CCIs must make every effort to uphold the juvenile justice system's principles in the child's best interests. A child care institution defined above in the research paper offers any home or institution recognized under the JJ Act 2015, providing care and safety to the children who need such protection. Section 41 of the JJ Act, 2015 provides for the mandatory registration of all CCIs, irrespective of whether they are run by a state government or by voluntary or non-governmental organizations, which are meant, either wholly or partially, for the housing of children in need of care and protection or children in conflict with law. Despite this mandatory registration, it was pointed out in 2018 by the Committee on review exercise of CCIs that only 32% of CCIs were registered in India (In Re v. Union of India, 2017).

A few broad categories of child care institutions provided under the JJ Act, 2015 are:

- i. **Observation Home:** It is established and maintained in every district either by itself or by a voluntary or non-government organization by the state government (Juvenile Justice (Care and Protection) Act 2015 s 2(40)), for temporary reception, care, and rehabilitation of child in conflict of law when the inquiry against the child is pending under the JJ Act, 2015. Furthermore, it is to be registered for the specified purpose under Section 41 of the JJ Act, 2015 (Juvenile Justice (Care and Protection) Act, 2015 s 47).
- ii. **Children's Home:** As defined under the JJ Act, 2015, it is established or maintained in every district or group of districts by the state government, either by itself or through a voluntary or non-governmental organization (Juvenile Justice (Care and Protection) Act 2015 s 2(19)), and these homes are registered under section 41 of the JJ Act 2015, for the placement of children who need care and protection and for proper treatment, education, training, development and rehabilitation (Juvenile Justice (Care and Protection) Act 2015, s 50).
- iii. **Place of Safety:** When a child is alleged or found in conflict with law the child is placed in a 'Place of Safety' which means any place or institution, not being a police lockup or jail, established separately or attached to an observation home or a special home, as the case may be, by the order of the board or children's court during the period of inquiry and ongoing rehabilitation after being found guilty. The person in-charge of such a CLC is willing to receive and take care of the children alleged or found to be in conflict with law for the purpose specified under the order of the board and children's court (Juvenile Justice (Care and Protection) Act 2015, s 2(46)). The places of safety are set up by the state government for the placement of children above the age of eighteen years and children in conflict with law and who have committed heinous offence. (Juvenile Justice (Care and Protection) Act, 2015 s 49)
- iv. **Special Home:** It is an institution established by a state government or by a voluntary or non-governmental organization (Juvenile Justice (Care and Protection) Act 2015, s 2(56)), registered (Juvenile Justice (Care and Protection) Act 2015, s 41) for housing and providing rehabilitation services to children in conflict with law, who are found to have committed an offence through an inquiry by order of the board (Juvenile Justice (Care and Protection) Act 2015, s 48).
- v. **Fit Facility:** It is run by a governmental organization or a non-governmental organization, or a registered voluntary (Juvenile Justice (Care and Protection) Act 2015, s 2(27)). It takes

responsibility for the child for care, rehabilitation, and re-integration for a temporary period during the inquiry by the board or the Committee (Juvenile Justice (Care and Protection) Act 2015, s 51(1)).

IV. Institutionalization as a measure of last resort

Globally, we can see the shift from institutional to family or community-based child care as various international instruments on child care and research recommend the same. This is because there are various developmental issues with the children in institutional care. It has a negative impact on the children in those CCIs, and this lasts throughout their lives.

In India, the above change is reflected in the National Policy for Children, 2013, which is in accordance with the Convention on the Rights of the Child. It emphasizes that with due regard for the child's best interests and while ensuring high standards of care and protection, the state shall work to ensure family- and community-based care arrangements, such as sponsorship, kinship, foster care, and adoption, in order to ensure the best interest of a child who is temporarily or permanently deprived of parental care. (India, 2018)

The 'Guidelines for the Alternative Care of Children' ('the Guidelines' hereinafter) were adopted by the United Nations General Assembly (Framework), intending to enhance the implementation of the Convention on the Rights of the Child and relevant international instruments protecting the well-being of the children who are deprived of parental care.

The Guidelines (Framework) outline the need to support children through proper policy and practice with necessity and appropriate measures. Family care is emphasized because it is the best environment for the child. When a child is deprived of parental care or at risk of losing it, the state must protect the child's rights and provide adequate alternative care.

In consonance, Article II(A)(8) states that *the state's role is to develop and implement comprehensive child welfare and protection policies within the context of their overall social and human development policy, with a focus on improving existing alternative care provision, reflecting the principles contained in the present Guidelines* (art 7 (Framework)). In addition, Article II(B)(23) states that "*while acknowledging that residential care facilities and family-based care complement each other in meeting the needs of children, where large residential care facilities (institutions) remain, alternatives should be developed in the context of an overall deinstitutionalization strategy, with precise goals and objectives, that will allow for their progressive elimination*" (Framework).

Institutionalization is not considered a first resort because research and experience have shown that children deprived of family care and brought up in CCIs may have various problems. These include:

- i. Delayed physical and hormonal growth, lower brain activity, behavioural issues, depression, or other psychological disorders.
- ii. Lack of individual attention and a sense of detachment.
- iii. Emotional isolation and insecurity because children are cared for by changing staff, so they cannot form an attachment with a single person.
- iv. Children may show poor academic performance and other behavioural problems due to psychological, emotional, and nutritional deprivation.
- v. Children either become very submissive, defiant, or rebellious due to the non-fulfillment of individual needs and excessive strictness.

V. Prospects and challenges of Child Care Institutions

Both governmental and non-governmental organizations and voluntary registered organizations are working for children's care and protection, holistic development, and social reintegration. However, several challenges are being faced by the CCIs due to overcrowding, absence of professional staff, inadequate care and treatment, recreational facilities, and others to be discussed below that adversely affect the fundamental rights of the children.

- i. Individual bedding, proper nutrition, hygiene, maintenance of the CCIs, sufficient water, health check-ups, and educational facilities based on the child's age and special needs were discovered to be inadequately addressed in many CCIs.
- ii. Inadequate staff both as per the norm and as per sanction by the government across all the CCIs.
- iii. Absence of grievance redressal mechanisms for children.
- iv. Most of the CCIs do not have the necessary system for maintaining documented financial records in place.
- v. Regular enquiries are not conducted before and after the adoption, and illegal adoption cases exist.
- vi. Lack of Infrastructure, such as a boundary wall, fencing, etc., within the premises of many CCIs, including privacy in toilets and bathing areas.
- vii. Lack of aftercare and follow-up, no vocational or orientation programs are being organized.
- viii. Adherence to the legislation is lacking for the proper working of the juvenile justice system.

It is disappointing to find that CCIs still need to provide the basic care and protection to vulnerable children that the JJ Act, 2015 requires. All of this has an impact on the children, as well as the image of CCIs. Donors are cautious about sponsoring CCIs because of the risk of losing their reputation, as well as government moves to shut down CCIs. According to the report submitted by the States/UTs, 436 institutions were closed from August 01st, 2019 to August 01st, 2020 due to non-compliance with the terms of the Juvenile Justice (Care and Protection of Children) Act, 2015 (Development, 2021).

VI. Need to reform Child Care Institutions

Globally, it has been accepted that even the best institutions cannot substitute for the care that a family can give to a child. Unfortunately, there are some children for whom that may be the only option. That is why it has become essential to reform and improve the quality of CCIs. In this context, the Delhi government released guidelines on April 22nd, 2018, requiring all Delhi CCIs to have an adequate number of security officials, guards, CCTV cameras, and fire extinguishers to ensure the safety and security of the children (Times, 2018).

The Supreme Court judge, Madan B. Lokur, in PIL (Sampurna Behrua v Union of India) filed by the petitioner in 2005, has expressed his view on the tardy implementation of laws beneficial to children under the protection of the JJ Act 2015, and further addressed the state to proactively acknowledge that laws to be implemented appropriately as children of our country also have fundamental rights and human rights. In order to verify that minimal standards of care are being followed, the Supreme Court, in the same case in 2018, recommended that state governments must assess CCIs across India.

The following may be a few steps which, if followed, can strengthen CCIs:

- i. The staff in the CCIs needs to be properly trained to sensitively and efficiently deal with children and their issues, needs, problems, and safety. Proper screening and background checks of all people concerned with the CCI must be carried out.
- ii. Participation of children in the decision-making process of CCIs, will allow children to discuss and decide on matters that affect their lives. Every institution must have a child management

- committee for the monitoring of the progress of the child and for the management of the institution. (The Juvenile Justice (Care and Protection of Children) Model Rules, 2016, r 39)
- iii. The complaint and redressal mechanism need to be set up by the management committee in every CCIs. Furthermore, these committees are encouraged to participate in improving the condition of CCI; review of standards of care; development of plans for education, vocational training; and abuse by peers and caregivers, etc.
 - iv. Regular inspections and monitoring must be done by the relevant authorities, and appropriate action must be taken against CCIs which are not following norms.
 - v. Vocational programs must be carried out for children who leave child care institution on attaining the age of eighteen years by providing them with essential things, knowledge, employable skills, and placement, to facilitate their integration into the mainstream of society. For this, CCIs can be linked with non-profit organizations that work on rehabilitation.
 - vi. The CCIs environment must be free from any abuse. Proper care and psychiatric help must be provided to those with mental health problems.
 - vii. Child abuse can be avoided by instilling a culture of non-acceptance within the CCI. A written code of behaviour for staff and visitors; awareness training for trustees, staff, and children; and huge visible posters encouraging reporting of the lack of cases are all examples of ways to foster such a culture. Regular visits from associated non-government organizations and counsellors can also help to foster an open and secure culture (Jain).
 - viii. Recreational facilities like indoor and outdoor games, yoga, meditation, music, television, etc., need to be adopted, which can also help in tough times like Corona Virus Disease 2019 (COVID-19).

Recently, to strengthen CCI to ensure children's best interests, the parliament passed the proposed amendment 2021 of the Women and Child Development Ministry to bring changes to the Juvenile Justice Act, 2015. The amended law strengthens the power of district magistrates (DMs) and additional district magistrates (ADM) to keep check on the functioning of various agencies under the JJ Act in every district. The amendments also authorize them to issue adoption orders under Section 61 of the JJ Act to ensure speedy trial through the disposal of cases and enhance accountability.

Earlier, before the registration of CCI, the organizations were required to send the proposal to the state government directly. But now, the DM will conduct a background check and assess the capacity of the institution. After this, he will have to submit the recommendations to the state government. However, its enforcement still needs to be in order. The Child Rights Commission has addressed the issue to the Ministry of Women and Child Development, saying that if the amendment is implemented, it will keep crimes like cruelty towards children in orphanages, begging, drug abuse, militant movement, trafficking of children under the purview of non-cognizable offence. (Mahaprashasta, 2022)

Making certain crimes non-cognizable (Juvenile Justice (Care and Protection) Amendment Act 2021 s 86(2)) by the 2021 amendment to the JJ Act, 2015 has raised concern among experts as it would make reporting to the police harder. The issue with this is that the majority of these crimes are reported to the police by either parents or child rights bodies and Child Welfare Committees (CWC), as the victims themselves are unable to report them directly. The parents are primarily daily wagers with little information about the system and want to avoid engaging in the lengthy legal process. That is why adding one more step in reporting such cases will further discourage them. CWCs want to avoid taking the matter to the police and prefer to talk and arrive at a settlement (Lakshman, 2020). Even the Delhi Commission for Protection of Child Rights (DCPCR) has filed a writ petition in the Supreme Court challenging the amendment as unconstitutional and violative of Articles 14 and 15 of the Constitution as there is no reasonable justification or rational nexus sought to be achieved by reclassifying the cognizable offences as non-cognizable offences. The categorization is stated to be contrary to the general scheme of the Indian

Penal Code (IPC), wherein offences punishable with imprisonment for more than three years are categorized as cognizable (Network, 2022).

VII. Conclusion

Children are the most vulnerable and disadvantaged group in society. The CCIs environment is inadequate in providing attention and care to the children. Child health is threatened or neglected when a child is institutionalized. Children who grow up in these institutions tend to develop poor independence and may have low social maturity. Interaction and systematic programs are lacking in CCIs, which the government should address.

However, it has also been found that the system of child care institutions in India has failed miserably. They have large numbers of children, inadequate infrastructure, lack of trained staff; often children are abused and exploited, or feel neglected, secluded etc. Children in non-institutional care, on the other hand, feel protected, nurtured, and secure as they grow up in a family-centered environment. They can develop themselves better as happy and constructive adults when they leave the institution with proper nurture and support. Thus, alternative care mechanisms like adoption, etc., must be promoted in India by creating social awareness and a positive, congenial social atmosphere for adoption. The Delhi High Court (*Rajesh Kumar v State (Govt. of NCT of Delhi & Ors.)*) and Karnataka High Court (*T.C. Rajanna v State of Karnataka*) recently directed the state government that effective steps need to be taken to ensure that children do not escape from CCIs.

In India, the focus is to promote alternative forms of family strengthening, as institutionalization is considered the last resort. However, it has to be kept in mind that for some children, institutionalization is the only option. Therefore, to safeguard the rights and to provide for the full and harmonious development of children who are placed in CCIs, it is required that such institutions be strengthened. Undoubtedly, the changes proposed by the Ministry of Women and Child Development were much needed, but it has to be seen as to how they will be implemented.

HIJAB AS A RIGHT TO FREEDOM OF EXPRESSION IN INDIAN “QUALIFIED PUBLIC SPACES”: A CRITICAL ANALYSIS OF THE HIJAB BAN CASE

Hassana Quadri* & Altamish Ilyas Siddiki**

Abstract

Women and girls around the world face multiple and intersecting discriminations and restrictions that prevent them from fully exercising their fundamental rights. Gender based violence, limited access to education, restriction in movement and clothing, lack of choices and financial freedom are a few of these. The ability of women and girls to exercise their right to freedom of expression has been and remains a crucial tool for combating patriarchal attitudes, inequality, and discrimination. Women are a fast-growing segment of Indian population that reflects the breadth of this country's racial, ethnic, and multicultural heritage and includes Muslim women. Recent decision of the Karnataka High Court in restricting the right to wear hijab in government educational institutes, and inaction of the Supreme Court of India has brought in a new discussion on the right to wear hijab - right to freedom of expression (through wearing clothes) versus prescribed uniform of an institute. The Authors in Section 2 of the present paper would discuss this right in view of historical judicial development tracing its origin and conflicting high court decision in view of absence of a Supreme Court decision. Under Section 3 of the paper, the authors will attempt to distinguish the right to wear hijab as an expression rather than religious right, in view of the recent Karnataka High Court judgment and the sub-judice Supreme Court appeals. Section 4 of the paper will deal with the HC and SC judgment on the issue vis-à-vis classroom space with reference to diversity and the overall object of the schools in a society. Finally, under Section 5, the authors discuss what could have been a more constitutionally sound approach in dealing with such right of wearing hijab of Muslim women in class and share certain suggestions on the same. The authors attempt to put across the right to wear hijab without any attempt to gain support from the religious rights guaranteed under the Constitution of India.

Keywords: *Hijab, Freedom of Expression, Women rights, Minority Rights.*

I. Introduction

One's right to clothing has been recognised as part of panoply of human rights, guaranteed under broader principles of international law, and more specifically under Universal Declaration of Human Rights, 1948 and International Covenant on Economic, Social and Cultural Rights (ICESCR). However, the said right is more rooted in the basic human right for adequate clothing, rather than a right to express one's physical, psychological, cultural or social belongingness. Thus, this legal right may not have received adequate recognition and courts have not had the opportunity to develop jurisprudence on this right to dress as one's right to expression of their personal identity. In this perspective, clothing from 'attire' becomes 'costume'¹: what one wears is therefore not exclusively the result of a choice based on personal taste or contingent factors, but also represents a sort of implicit declaration of belonging to a group characterised by a common religious belief, political opinion, or cultural matrix². Indian jurisprudence on the aspect of legal right to dress or clothing as a right to expression is bereft of any specific judgment recognising the said right and the closest the Supreme Court of India (“Supreme Court” herein after) came was in the judgment of National

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¹ Latino, Agostina (2023), “The Right to Dress in International Law as a Right in itself and as a Parameter on the Ridge between Freedom of Expression and Prohibition of Discrimination”, Athens Journal of Law 9 (2): 229-244.

² Ramachandran, Gowri (2006) “Freedom of Dress: State and Private Regulation of Clothing, Hairstyle, Jewellery, Makeup, Tattoos, and Piercing” Maryland Law Review, Vol. 66:11.

Legal Services Authority v. Union of India & Ors.³ (popularly known as NALSA Judgment) wherein the Supreme Court held “Self-identified gender can be expressed through dress, words, action or behaviour or any other form. No restriction can be placed on one’s personal appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution.” The authors in the present paper will delve into this right to clothing as legal and constitutional right in the context of Indian jurisprudence, right to wear hijab of girls as their right to expression rather than just a religious right and specifically dealing with Muslim girl’s right to seek education against right to expression in a classroom in view of the recent Karnataka High Court judgment as well as Supreme Court’s split verdict on the issue.

II. Tracing history of right to expression and right to clothing

Right to freedom of speech and expression extends to all citizens. This is the constitutional right guaranteed under article 19 (1) (a) of the Indian Constitution to every citizen of India. The right, however, is not absolute and is subject to restrictions. Article 19 allows “reasonable restrictions” on the right to freedom of speech and expression “in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.”⁴

The right to clothing as a sense of “symbolic speech” has long history in many jurisdictions. In the year 1969, the Supreme Court of the United States of America in the judgment of *Tinker V. Des Moines School District*⁵ dealt with the constitutionality of a public-school administration suspending a group of students for wearing black armbands as a sign of silent protest to the Vietnam War. The US Supreme Court held that the black armbands were constitutionally protected speech. The majority observed that school students had not surrendered any of their fundamental rights by deciding to enroll in a school⁶. The court held, “*First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.*” [Emphasis supplied]. The court had noted that the circumstances with respect to the armbands being worn by the students, that is, the students were wearing it to specifically protest the Vietnam War and were therefore making a political statement, such symbolic conduct would amount to speech. The court, thus notes: “*It was closely akin to ‘pure speech’ which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment.*”⁷

The Indian Courts have not dealt with any judgment specifically dealing with any clothing or accessory as symbolic of speech or expression as guaranteed under Article 19 of the Indian Constitution. However, under the NALSA judgment, the Supreme Court while allowing rights of transgenders to wear their choice of clothes to express their identity, upheld this right as part of freedom of expression by holding, “*Principles referred to above clearly indicate that the freedom of expression guaranteed under Article 19(1)(a) includes the freedom to express one’s chosen gender identity through varied ways and means by way of expression, speech, mannerism, clothing etc.*” While arriving at this conclusion, the Supreme Court referred to two US Supreme Court decisions. The Supreme Courts holds as below:

³ Writ Petition (Civil) No.400 of 2012; AIR 2014 SC 1863

⁴ Article 19 (2) of the Constitution of India.

⁵ 393 U.S. 503 (1969).

⁶ Kartik Ramesh, Hari (2022) “The Hijab Case through the Lens of Article 19(1)(a)” published with Gautam Bhatia’s Indian Constitutional Law and Philosophy blog, available at <https://indconlawphil.wordpress.com/2022/02/10/guest-post-the-hijab-case-through-the-lens-of-article-191a/>

⁷ Supra note 5 at page 505.

“We may, in this connection, refer to a few judgments of the US Supreme Courts on the rights of TG’s freedom of expression. The Supreme Court of the State of Illinois in the City of Chicago v. Wilson et al., 75 Ill.2d 525(1978) struck down the municipal law prohibiting cross-dressing, and held as follows:

“The notion that the State can regulate one’s personal appearance, unconfined by any constitutional strictures whatsoever, is fundamentally inconsistent with “values of privacy, self-identity, autonomy and personal integrity that the Constitution was designed to protect.”

In Doe v. Yunits et al., 2000 WL33162199 (Mass. Super.), the Superior Court of Massachusetts, upheld the right of a person to wear school dress that matches her gender identity as part of protected speech and expression and observed as follows:

“By dressing in clothing and accessories traditionally associated with the female gender, she is expressing her identification with the gender. In addition, a plaintiff’s ability to express herself and her gender identity through dress is important for her health and well-being. Therefore, plaintiff’s expression is not merely a personal preference but a necessary symbol of her identity.”

The judgment, thus, could provide the basis to seek the right to clothing as part of expression as a constitutional right.

III. Right to wear Hijab of Muslim women as a form of Right to Freedom of Expression versus State restrictions

Wearing of hijab by a Muslim woman can be and should be seen as their reaffirmation of their religious identity through a piece of clothing and thus, a form of “symbolic speech” as was held in the previously discussed case of Tinker (supra) of the US Supreme Court. In some cases, as was seen during the hearing of hijab case before the Karnataka High Court, it can also become a form of *resistance*. However, as with any right, this would also be subject to reasonable restriction by the State. Now the issue that needs to be addressed is the extent of such restriction since the Indian jurisprudence has established the principles of proportionality and reasonable accommodation for these issues, i.e., the State must adopt restrictions which are least intrusive of one’s right and accommodation must be made as much as possible to avoid a situation where not doing so would lead to exclusion.

It would be important to highlight that the present controversy of the hijab case is pending adjudication before a larger, yet to be constituted, after the division of the Supreme Court, in Aishat Shifa V. The State of Karnataka & Ors.⁸, gave dissenting opinions. However, both the judges in the judgment have accepted the argument that the right to wear hijab, *prima facie*, is protected under the right to freedom of expression. The difference of opinion is on the state’s regulation and/or restriction of this right. Gupta, J., while uploading the appeals hold: *“It is reasonable as the same has the effect of regulation of the right guaranteed under Article 19(1)(a).”*⁹ However, the judgment is completely devoid of+, in the opinion of the authors, any ground under Article 19 (2) of the Constitution, under which the right could be restricted.

The origin of the issue appears not on the law and order, as was argued by the State in the Supreme Court. This appears to be closer to the concept of “heckler’s veto” i.e., if an objector to a certain form of expression is able to cause enough chaos, the state may opt for the easier option of silencing the speaker rather than

⁸ Civil Appeal No. 7095 of 2022 (Arising Out of SLP (Civil) No. 5236 OF 2022) being the lead case in the batch of petitions vide judgment dated 22 October 2022 wherein the matter has been placed before the Chief Justice of India to place the matter before an appropriate bench.

⁹ Ibid. at para. 146

stopping the violence¹⁰. The Supreme Court has previously held that the State cannot utilise the Heckler's veto to attempt to silence individuals¹¹.

The authors respectfully submit that the present issue of wearing Hijab by Muslim women in classrooms, if argued as a right to freedom of expression, can only be curtailed under grounds available under Article 19(2). However, the said eight grounds as contained under Article 19 (2) were not dealt with by the Supreme Court. The judgement has simply stated to be covered under "reasonable restrictions" that State can impose on the right to freedom of expression.

IV. Right to wear Hijab vis-à-vis classroom space

The right to wear Hijab either as a religion right or right to freedom of expression was not questioned in either the High Court judgment or the Supreme Court judgment on the issue when it was only limited to a public space, such as roads, malls, etc. However, the issue was contested if the said right could extend to places such as schools who may or may not prescribe certain uniform. The three-judges bench judgment of Karnataka High Court and dissenting opinion of Gupta, J., in the Supreme Court judgment have relied heavily on the concept of uniform and discipline to allow the State's restriction on wearing hijab on the ground of permissible regulation under Article 19. However, the judgments suffer from non-application of legal principle of the test of proportionality, i.e., whether a less restrictive approach could achieve this object of "uniform" and "discipline". It is noteworthy that the object of the schools has been put to prescribe uniform in order to promote "equality" and how the "homogeneity" of the uniform discourages sectarianism and encourages constitutional fraternity¹².

India, unlike many global jurisdictions does not practice negative secularism, i.e., any religion symbol, clothing, etc would not be allowed. Rather, India follows the concept of positive secularism that each individual has the freedom to follow their own religion and concepts, and even are free to promote the same, albeit with restrictions prescribed under the Constitution. However, the restriction of wearing of hijab appears to be a direct discrimination of only Muslim female students and thus, a gender-based discrimination. Further, it also affects only one particular community or religion and thus, is also violative of indirect discrimination as well. The courts have, respectfully in the opinion of the authors, wrongly decided against the said argument by simply stating that since the dress code or uniform is equally applicable to all students, the question of discrimination does not arise. Reasonable accommodation has thus not been applied to State to discharge their burden of accommodating the claim of undue hardship by a particular group or community. The high court's over-emphasis of object of prescription of uniform goes to the extent of stating that object of prescribing a uniform would be defeated if there is "non-uniformity in the matter of uniforms"¹³ which also resonates in the Gupta, J.'s opinion on the Supreme Court judgment. However, a closer look would allow one to see that this is in loggerhead to the India's commitment to positive secularism and diversity.

The High Court also distinguishes classroom as "qualified" public place against the generally accepted notion of a public place. The High Court and then Gupta, J.'s opinion in Supreme Court judgment have accepted the State's argument that the right to freedom of expression cannot extend to such "qualified" public places since these have primary goals such as maintaining discipline and decorum and thus, individual rights must give way to the collective primary goal of such "qualified" public places. However, the court has not travelled to either trace or discuss the distinction of these "qualified" public places from a

¹⁰ Supra note 6.

¹¹ Prakash Jha Production and Anr. v Union of India, Writ Petition (Civil) No(s). 345 of 2011.

¹² Supra Note 8 at para 154.

¹³ Smt Resham and Another Vs. State of Karnataka and Others, with WP NO. 2347/2022 being treated as lead case, at para. 106 judgment, Karnataka High Court.

generally understood concept of public space. The court also does not distinguish how a concept of positive secularism applies differently in a “qualified” public space¹⁴.

The courts have, thus, put the object of education and indirect discrimination at the backdoor and allowed the State’s action to continue despite their burden never having been discharged on any reasonable accommodation.

V. Conclusion

The High Court judgment along with Supreme Court judgement, in the opinion of the authors, appears to be a very weak precedent in the jurisprudence of constitutional rights in India. Firstly, on the issue of wearing hijab being a right enjoyed under freedom of expression, as discussed under section 2 of the paper, the court’s reasoning to venture into establishing whether it is a religious right could be completely avoided and can be decided under Article 19(1) as well as Article 21 i.e., right to privacy. Further, the judgment, respectfully, also lacks reasoning on the right grounds which may allow State’s restriction under Article 19(2). The Courts also have not sought State to discharge their burden on reasonable accommodation. Any future challenge or the higher bench of the Supreme Court must strictly deal with the assertion of rights under the facets of established principles of law.

On the issue of how the right cannot be said to extend to a classroom also goes against the India’s idea of positive secularism. The authors believe that the process of deciding the case has lacked the judicial spirit which is the forefront of any democratic institute when asked to apply for a fundamental rights case. It is pertinent to mention that third world countries such as Malawi and Kenya have had recent developments on the issue in a much-needed spirited way of allowing minorities to assert their fundamental rights. A recent High Court judgment of the Malawi¹⁵ has dealt with a very similar issue by answering the fundamental question of purpose of a classroom. The court goes on to state that the classrooms must reflect the diversity of a society, so the children are well prepared for their entering into the society at large. The authors are in completely in line on the judicial application on such issues. The court goes on to state how a classroom must reflect true diversity of a country or a society at large rather than stripping individual students of such identity. The court also deals with the argument of how the primary objective of any classroom must be to impart education and State must ensure to remove hurdles against the same rather than imposing conditions which may not only be discriminative but (in Indian context) also do not stand the test under constitutional doctrines. Somehow, in the Hijab ban case, the courts have, respectfully, lost sight of the primary purpose of any educational institute and incidental issues were given primacy over the same.

Since the right is more in the realm of fundamental rights exercised under the Constitution, the State may not be in a position to enact an appropriate legislation to deal with the issue. Nevertheless, the authors believe that the right of wearing Hijab by Muslim women can be understood better by State in the context of right to freedom of expression as their identity is deeply rooted in such expression and does extend to any public space, including a classroom. Rather, such expression is a true reflection of India’s concept and idea of diversity and secularism.

¹⁴ It is noteworthy that the High Court judgment accepts that woman “can wear any apparel of their choice outside the classroom”. See para. 124 of the judgment.

¹⁵ Judicial Review Case Number 55 of 2019 with Judgment dated 8 May 2023.

UNMASKING HEALTH CRISES AND GLOBAL PANDEMIC: IDENTIFYING RISK TARGETS AND RAPID DIAGNOSTICS THROUGH A SOCIO-LEGAL LENS

Dr. Bhupinder Singh*

Abstract

In a world constantly challenged by health crises and the looming specter of global pandemics, the conventional paradigms surrounding these issues are undergoing a significant transformation. Within this socio-legal framework, we confront the critical imperative to identify and address risk targets comprehensively. While conventional approaches have often fixated on healthcare system preparedness and pathogen characteristics, this perspective necessitates a deeper exploration of systemic vulnerabilities. These vulnerabilities manifest as disparities in healthcare access, socioeconomic inequalities, and the intricate web of legal regulations that shape responses to public health emergencies. By discerning these risk targets, we unlock the potential to craft more nuanced and equitable strategies to mitigate the far-reaching consequences of pandemics. The role of rapid diagnostics in effective pandemic management emerges as a cornerstone of this socio-legal outlook. The timely and accurate identification of infectious diseases not only informs public health interventions but also carries profound implications for legal decisions, such as quarantine measures and resource allocation. The synergy between socio-legal dynamics and public health outcomes underscores the urgent need for robust and adaptable diagnostic infrastructure, emphasizing the interconnectedness of these domains. It transcends traditional biomedical viewpoints, offering a holistic comprehension of these multifaceted challenges. By identifying risk targets within the socio-legal fabric and prioritizing rapid diagnostics, we forge pathways to develop more inclusive, effective, and equitable strategies for managing and mitigating the impacts of global pandemics. This socio-legal outlook serves as a guiding compass, reinforcing the principles of transparency, accountability, and equity in our collective response to health crises and paving the way for a resilient and just global healthcare framework.

Keywords: *Health Crises, Pandemics, Infectious Diseases, Rapid Response, Socio-Legal Framework*

I. Introduction and Relevance of Research

Health crises and global pandemics represent multifaceted challenges that transcend traditional biomedical perspectives. As the world grapples with the far-reaching consequences of COVID-19 and anticipates future pandemics, there is a growing recognition that understanding these crises requires an interdisciplinary approach. This research paper delves into the evolving landscape of health crises and pandemics through a socio-legal lens, aiming to redefine our understanding by identifying risk targets and emphasizing the necessity of rapid diagnostics.¹ In an era defined by unprecedented global challenges, the conventional understanding of health crises and pandemics is undergoing a profound transformation. The world is witnessing a convergence of socio-legal perspectives in the context of healthcare crises, which has highlighted the intricate interplay between societal norms, legal structures, and public health.² This shift in perspective is essential as it allows us to transcend the simplistic view of pandemics as mere biological events and recognize them as multifaceted crises with far-reaching socio-legal implications.³

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¹ Kelly, A. H., Lezaun, J., & Street, A. (2022). Global health, accelerated: Rapid diagnostics and the fragile solidarities of 'emergency R&D'. *Economy and Society*, 51(2), 187-210.

² Mushkat, M., & Mushkat, R. (2020). The Challenge of COVID-19 and the World Health Organization's Response: The Principal-Agent Model Revisited. *Am. U. Int'l L. Rev.*, 36, 487.

³ Ventura, D. D. F. L., Giulio, G. M. D., & Rached, D. H. (2020). Lessons from the Covid-19 pandemic: sustainability is an indispensable condition of Global Health Security. *Ambiente & Sociedade*, 23.

One of the key aspects of this redefinition lies in the identification of risk targets within the socio-legal framework. Traditionally, discussions about health crises have predominantly centered on the healthcare system's capacity to respond to diseases. While medical preparedness is undoubtedly crucial, a socio-legal outlook compels us to delve deeper and examine the systemic vulnerabilities that amplify the impact of pandemics. These vulnerabilities include disparities in access to healthcare, socio-economic inequalities, and the legal frameworks that govern public health emergencies. The socio-legal analysis brings to the forefront the stark disparities in the impact of pandemics on different segments of society.⁴ Vulnerable populations, such as low-income communities, minorities, and marginalized groups, often bear the brunt of health crises. The socio-legal perspective prompts us to consider not only the immediate health consequences of pandemics but also their long-term legal and societal ramifications. It emphasizes the need to identify these vulnerable populations and implement targeted interventions to mitigate their risk, thus promoting a more equitable response to health crises.

Also, rapid diagnostics play a pivotal role in the effective management of pandemics, and this aspect gains further significance within the socio-legal context. Timely and accurate diagnosis not only informs public health strategies but also influences legal decisions related to quarantine, isolation, and resource allocation. The socio-legal framework underscores the importance of establishing robust and accessible diagnostic systems that can be swiftly deployed during a crisis. At the intersection of socio-legal perspectives, we find an emphasis on transparency and accountability in healthcare crisis management. Legal frameworks must be adaptive and responsive to emerging challenges, ensuring that public health measures are not only effective but also respect individual rights and liberties. Striking this delicate balance between public health imperatives and individual rights is a formidable challenge that requires continuous dialogue and legal innovation.⁵

The redefinition of health crises and pandemics through a socio-legal lens is a transformative endeavor that enriches our understanding of these complex phenomena. It compels us to broaden our perspective beyond the biomedical aspects of disease outbreaks and consider the intricate web of societal norms, legal structures, and ethical principles that shape our response.⁶ By identifying risk targets within vulnerable populations and prioritizing rapid diagnostics, we can develop more inclusive and effective strategies for managing global pandemics. Moreover, the socio-legal outlook reminds us of the paramount importance of upholding the principles of transparency, accountability, and equity in our collective response to health crises, ultimately paving the way for a more resilient and just global healthcare system.

II. Health Dynamics and Disease Prevention

Health dynamics and disease prevention are intricately woven into the fabric of global public health, transcending borders and demanding international collaboration. In an era marked by unprecedented connectivity and interdependence, understanding the international aspects of disease prevention is essential for safeguarding the well-being of individuals and communities worldwide. One of the key elements of health dynamics on an international scale is the transnational nature of diseases. Infectious diseases, in particular, respect no boundaries. Pathogens can traverse continents in a matter of hours, posing a global threat that necessitates a coordinated international response. Diseases like COVID-19 have vividly

⁴ Singh, B. (2019). Profiling Public Healthcare: A Comparative Analysis Based on the Multidimensional Healthcare Management and Legal Approach. *Indian Journal of Health and Medical Law*, 2(2), 1-5.

⁵ Wenham, C. (2019). The oversecuritization of global health: changing the terms of debate. *International Affairs*, 95(5), 1093-1110.

⁶ Burkle Jr, F. M. (2019). Challenges of global public health emergencies: development of a health-crisis management framework. *The Tohoku journal of experimental medicine*, 249(1), 33-41.

demonstrated the rapidity with which a localized outbreak can escalate into a global pandemic, underscoring the urgency of international cooperation in surveillance, detection, and containment efforts.⁷

The global movement of people has amplified the international dimensions of health dynamics. Tourism, trade, and migration facilitate the spread of diseases and increase the likelihood of outbreaks occurring in different parts of the world. This mobility highlights the need for standardized health measures, such as vaccination requirements and health screening protocols at international borders, to prevent the cross-border transmission of diseases.⁸

International collaboration in disease prevention extends beyond crisis response. It encompasses research, knowledge sharing, and capacity building. Joint efforts in vaccine development, for example, have been critical in addressing global health challenges like polio and Ebola. Additionally, international organizations and initiatives play a vital role in disseminating best practices, supporting healthcare infrastructure development in resource-limited regions, and fostering cooperation among nations to bolster disease prevention efforts.

Global health diplomacy is another significant facet of the international aspect of disease prevention. Diplomatic efforts facilitate the exchange of information, expertise, and resources between countries to address health challenges collectively. During pandemics, diplomatic negotiations can lead to the equitable distribution of vaccines and medical supplies, ensuring that vulnerable populations in all corners of the globe have access to essential healthcare resources.⁹

The health dynamics have socioeconomic implications on an international scale. The burden of disease disproportionately affects low- and middle-income countries, exacerbating existing disparities in access to healthcare and resources. Addressing these disparities is a crucial aspect of international disease prevention, emphasizing the need for collaborative efforts to strengthen healthcare systems, improve healthcare infrastructure, and enhance the capacity to respond to emerging health threats. The interconnectedness of our world mandates a comprehensive and collaborative approach to surveillance, response, research, and resource allocation to safeguard public health. International solidarity, diplomacy, and equity-driven efforts are indispensable in mitigating the impact of diseases, reducing health disparities, and fostering a healthier, more resilient global community.¹⁰

III. Health Advancement and Prevention of Diseases: Significance of Food and Nutrition

The significance of food and nutrition in health protection and the elimination of diseases cannot be overstated. Nutrition is a cornerstone of human health and well-being, playing a pivotal role in preventing diseases, boosting the immune system, and promoting overall vitality. In this context, food serves as both a source of nourishment and a powerful preventive tool.¹¹

First and foremost, proper nutrition is vital for maintaining a robust immune system, the body's natural defense against diseases. Nutrient-rich foods supply the body with essential vitamins, minerals, antioxidants, and other bioactive compounds that bolster immune function. A balanced diet rich in fruits,

⁷ Pollock, J. C., & Vakoch, D. A. (Eds.). (2021). *Covid-19 in international media: Global pandemic perspectives*. Routledge.

⁸ Donato, V. E. S. E. (2023). Managing the pandemic: the Italian strategy for fighting Covid-19 and the challenge of sharing administrative powers. *European Journal of Risk Regulation*, 14(1), 113-140.

⁹ Trenz, H. J., Heft, A., Vaughan, M., & Pfetsch, B. (2021). Resilience of public spheres in a global health crisis. *Javnost-The Public*, 28(2), 111-128.

¹⁰ Trabucco, F. R. (2020). The COVID-19 Post-lockdown Italian Scenario from an Eco-Socio-Legal Perspective. *Białostockie Studia Prawnicze*, 3(25), 99-116.

¹¹ Magnusson, R. S. (2007). Non-communicable diseases and global health governance: enhancing global processes to improve health development. *Globalization and health*, 3, 1-16.

vegetables, lean proteins, whole grains, and healthy fats provides the body with the necessary tools to fend off infections, such as viruses and bacteria. Adequate nutrition ensures that immune cells are well-equipped to identify and neutralize pathogens effectively. Furthermore, nutrition plays a pivotal role in chronic disease prevention.¹² Poor dietary choices are a leading risk factor for non-communicable diseases such as heart disease, diabetes, and certain cancers. Consuming excessive amounts of processed foods, high in added sugars, unhealthy fats, and salt, can contribute to the development of these chronic conditions. Conversely, a diet focused on whole, nutrient-dense foods can significantly reduce the risk of chronic diseases. For instance, a diet high in fiber, like that found in fruits, vegetables, and whole grains, can help manage blood sugar levels, lower cholesterol, and reduce the risk of heart disease.

In the context of infectious diseases, nutrition also plays a crucial role in recovery. Malnourished individuals are more susceptible to infections, and if they do become infected, they often experience more severe symptoms and complications. Adequate nutrition is vital for the body to repair tissues, produce immune cells, and mount an effective response to infections. In cases of severe infections or critical illnesses, nutritional support can be a life-saving intervention.

Furthermore, proper nutrition is a fundamental component of public health efforts to combat malnutrition and undernutrition in vulnerable populations, particularly children and pregnant women. Adequate nutrition during pregnancy is essential for fetal development, reducing the risk of birth defects and low birth weight. In children, good nutrition in the early years is critical for healthy growth and cognitive development, setting the foundation for lifelong health.¹³ The significance of food and nutrition in health protection and the elimination of diseases cannot be overstated. Nutrition is intricately linked to immune function, chronic disease prevention, recovery from infections, and the overall well-being of individuals and communities. Public health strategies should prioritize nutrition education, access to nutritious foods, and policies that promote healthy eating habits to safeguard and enhance human health, reduce disease burden, and improve the quality of life for populations worldwide.¹⁴

IV. Identifying Risk Targets in Health Crises and Global Pandemic

Identifying risk targets in health crises and global pandemics through a socio-legal perspective is an essential endeavor that sheds light on the complex interplay between societal norms, legal frameworks, and the vulnerabilities inherent in public health systems. In the context of the socio-legal lens, the identification of risk targets goes beyond the conventional biomedical approach, recognizing that health crises are not solely biological phenomena but intricate social and legal constructs.¹⁵

One pivotal aspect of this socio-legal perspective lies in recognizing systemic vulnerabilities. Health crises expose fault lines within societies, revealing disparities in access to healthcare, socio-economic inequalities, and the limitations of legal frameworks in addressing emergent challenges. Vulnerable populations, often marginalized and underserved, are at heightened risk during pandemics. By identifying these risk targets within a socio-legal framework, we gain insight into the social determinants that amplify the impact of health crises and can formulate strategies to mitigate disparities in healthcare access and outcomes.¹⁶

¹² Singh, B. (2022). Relevance of Agriculture-Nutrition Linkage for Human Healthcare: A Conceptual Legal Framework of Implication and Pathways. *Justice and Law Bulletin*, 1(1), 44-49.

¹³ Moynihan, P., & Petersen, P. E. (2004). Diet, nutrition and the prevention of dental diseases. *Public health nutrition*, 7(1a), 201-226.

¹⁴ Bhat, S., Nandini, C., & Tippeswamy, V. (2018). Significance of small millets in nutrition and health-A review. *Asian Journal of Dairy and Food Research*, 37(1), 35-40.

¹⁵ Singh, B. (2022). COVID-19 Pandemic and Public Healthcare: Endless Downward Spiral or Solution via Rapid Legal and Health Services Implementation with Patient Monitoring Program. *Justice and Law Bulletin*, 1(1), 1-7.

¹⁶ Temple, N. J., Wilson, T., Jacobs Jr, D. R., & Bray, G. A. (Eds.). (2023). *Nutritional health: strategies for disease prevention*. Springer Nature.

A socio-legal outlook prompts us to consider the ethical dimensions of health crises. It calls attention to the ethical dilemmas that arise when public health measures intersect with individual rights and liberties. Balancing the imperative to protect public health with the preservation of individual freedoms is a complex task that requires nuanced legal and ethical deliberation. Identifying risk targets in this context means discerning the potential ethical dilemmas that may emerge and crafting legal frameworks that prioritize both public health and individual rights. The socio-legal perspective highlights the role of legal institutions in shaping responses to health crises. Laws and regulations governing public health emergencies become critical tools in managing and mitigating the impact of pandemics. Identifying risk targets in this context involves assessing the adequacy and adaptability of legal frameworks to address emerging health threats.¹⁷ It necessitates an examination of the legal authority granted to public health agencies, the mechanisms for enforcing public health measures, and the potential gaps or shortcomings in existing legal structures.

So, identifying risk targets in health crises and global pandemics through a socio-legal perspective is a multidimensional endeavor that transcends the traditional biomedical view. It encompasses recognizing systemic vulnerabilities, addressing ethical dilemmas, and evaluating the role of legal institutions in shaping responses to crises. By embracing this holistic approach, we can develop more comprehensive and equitable strategies for managing health crises, safeguarding vulnerable populations, and upholding the principles of transparency, accountability, and justice in our collective response to global health challenges.¹⁸

V. The Crucial Role of Rapid Diagnostics: Public Healthcare

The crucial role of rapid diagnostics in public healthcare cannot be overstated, particularly in the context of health crises and infectious disease outbreaks. Rapid and accurate diagnostic tools serve as the linchpin of effective disease management and public health interventions. These diagnostics empower healthcare professionals with timely information, enabling them to make informed decisions, allocate resources efficiently, and respond swiftly to emerging health threats.¹⁹

One of the primary benefits of rapid diagnostics is their ability to facilitate early detection and containment of infectious diseases. During outbreaks, quick identification of cases is essential for implementing isolation measures, contact tracing, and treatment protocols. Rapid tests, such as molecular assays or antigen tests, can provide results within hours or even minutes, enabling healthcare systems to identify and isolate infected individuals promptly, preventing further transmission. Moreover, rapid diagnostics play a vital role in reducing the burden on healthcare systems. By swiftly identifying cases and stratifying patients based on their infection status, healthcare facilities can optimize resource allocation. This includes assigning hospital beds, deploying medical staff, and ensuring the availability of essential medical supplies like ventilators and personal protective equipment (PPE). During pandemics, when healthcare systems face unprecedented strain, efficient resource allocation can be a matter of life and death.

In addition to their utility in disease outbreaks, rapid diagnostics are instrumental in routine healthcare settings. They empower physicians to make accurate and timely diagnoses, which is crucial for managing chronic diseases, prescribing appropriate treatments, and improving patient outcomes. For instance, rapid tests for conditions like diabetes, cardiovascular diseases, or certain cancers enable healthcare providers to tailor interventions to individual patients, reducing the progression of these diseases and improving their quality of life. The rapid diagnostics contribute to the ongoing surveillance of infectious diseases and the monitoring of public health trends. By collecting and analyzing diagnostic data in real-time, public health

¹⁷ Singh, B. (2020). Global Science and Jurisprudential Approach Concerning Healthcare And Illness. *Indian Journal of Health and Medical Law*, 3(1), 7-13.

¹⁸ World Health Organization. Centre for Health Development. (2010). *Hidden cities: unmasking and overcoming health inequities in urban settings*. World Health Organization.

¹⁹ Filip, R., Gheorghita Puscaselu, R., Anchidin-Norocel, L., Dimian, M., & Savage, W. K. (2022). Global challenges to public health care systems during the COVID-19 pandemic: a review of pandemic measures and problems. *Journal of Personalized Medicine*, 12(8), 1295.

agencies can detect emerging threats, track the spread of diseases, and implement targeted interventions.²⁰ This data-driven approach is invaluable for predicting disease trends, coordinating responses, and mitigating the impact of health crises.

The crucial role of rapid diagnostics in public healthcare extends far beyond the immediate detection of infectious diseases. These diagnostics are indispensable tools that empower healthcare systems to respond effectively to outbreaks, optimize resource allocation, improve patient care, and enhance disease surveillance. As technology continues to advance, the development and deployment of rapid diagnostic tools will be pivotal in safeguarding public health, reducing the burden of disease, and ensuring the resilience of healthcare systems in the face of emerging health threats.²¹

VI. Socio-Legal Frameworks for Pandemic Preparedness and Health Protection

Socio-legal frameworks for pandemic preparedness and health protection represent a vital pillar of a comprehensive public health strategy. These frameworks operate at the intersection of societal norms, legal structures, and ethical principles, providing the necessary guidelines and mechanisms to navigate health crises effectively. In times of pandemic, such as the COVID-19 outbreak, these frameworks serve as a cornerstone for coordinated responses.²²

One of the fundamental aspects of socio-legal frameworks is the establishment of legal authorities and responsibilities. These frameworks delineate the powers and duties of public health agencies, governments, and relevant authorities during a pandemic. This includes the authority to enforce public health measures, such as quarantine and isolation orders, travel restrictions, and vaccination requirements. Clarity in legal roles and responsibilities is critical for the efficient implementation of pandemic response measures while safeguarding individual rights and liberties.²³

Transparency and accountability are also integral components of socio-legal frameworks. Open communication, dissemination of accurate information, and the provision of clear guidelines to the public are essential. Public trust is a cornerstone of effective pandemic response, and transparency fosters confidence in the measures undertaken by authorities.²⁴ Additionally, accountability mechanisms ensure that government actions are subject to scrutiny, review, and, if necessary, legal challenge, preventing abuses of power and protecting individual rights. Moreover, these frameworks address the ethical dilemmas that arise during pandemics. Balancing the need to protect public health with individual freedoms and civil liberties is a complex task. Socio-legal frameworks incorporate ethical principles such as proportionality, necessity, and non-discrimination to guide decision-making. They ensure that pandemic response measures are not only lawful but also ethically sound, respecting human rights and individual autonomy.²⁵

²⁰ Alarcón Garavito, G. A., Moniz, T., Déom, N., Redin, F., Pichini, A., & Vindrola-Padros, C. (2023). The implementation of large-scale genomic screening or diagnostic programmes: A rapid evidence review. *European Journal of Human Genetics*, 31(3), 282-295.

²¹ Jin, Y. H., Cai, L., Cheng, Z. S., Cheng, H., Deng, T., Fan, Y. P., & Wang, X. H. (2020). A rapid advice guideline for the diagnosis and treatment of 2019 novel coronavirus (2019-nCoV) infected pneumonia (standard version). *Military medical research*, 7(1), 1-23.

²² NOMANI, M. Z., & Parveen, R. (2020). Medico-Legal Insights Into Covid-19 Pandemic and the Platter of Health Law Reform In India. *International Journal of Pharmaceutical Research (09752366)*.

²³ Kasstan, B., Mounier-Jack, S., Gaskell, K. M., Eggo, R. M., Marks, M., & Chantler, T. (2022). "We've all got the virus inside us now": Disaggregating public health relations and responsibilities for health protection in pandemic London. *Social Science & Medicine*, 309, 115237.

²⁴ Singh, B. (2022). Understanding Legal Frameworks Concerning Transgender Healthcare in the Age of Dynamism. *Electronic Journal of Social and Strategic Studies*, 3, 56-65.

²⁵ Khan, Z. A. (2022). Poverty alleviation and plight of migrant workers: Socio-legal issues in the pandemic phase. *International Journal of Human Rights and Constitutional Studies*, 9(1), 39-50.

Also, the socio-legal perspective emphasizes the importance of international cooperation. Global health crises require coordinated efforts among nations, and legal frameworks facilitate international collaboration in data sharing, resource allocation, vaccine distribution, and the harmonization of public health measures. Initiatives like the International Health Regulations (IHR) and the Framework Convention on Tobacco Control (FCTC) exemplify the power of international legal instruments in addressing global health challenges. These socio-legal frameworks for pandemic preparedness and health protection provide the essential infrastructure for navigating the complexities of health crises. They establish legal authorities, ensure transparency and accountability, address ethical dilemmas, and facilitate international cooperation. These frameworks not only guide the response to pandemics but also underscore the importance of upholding the rule of law and human rights in times of crisis, ultimately safeguarding the health and well-being of individuals and communities worldwide.²⁶

VII. Conclusion and Future Possibilities

The redefinition of health crises and global pandemics through a socio-legal lens represents a crucial intellectual shift. It transcends traditional biomedical viewpoints, offering a comprehensive understanding of these complex phenomena. By identifying risk targets within the socio-legal framework and prioritizing rapid diagnostics, we can develop more inclusive, effective, and equitable strategies for managing global pandemics. The socio-legal outlook serves as a guiding compass, reinforcing the principles of transparency, accountability, and equity in our collective response to health crises and paving the way for a resilient and just global healthcare framework. The health crises and global pandemics are transformative events that have reshaped the way we perceive, respond to, and prioritize public health challenges.²⁷ The past few years, marked by the COVID-19 pandemic, have served as a stark reminder of the interconnectedness of our world and the vulnerability of our healthcare systems. These crises have highlighted the need for holistic, multifaceted approaches that encompass not only biomedical factors but also societal norms, legal frameworks, and ethical considerations.

One of the central lessons we have learned is the imperative of international collaboration. Health crises recognize no borders, and the global community must work together to prevent, detect, and respond to emerging threats. Initiatives like COVAX have shown that equitable access to vaccines and medical supplies is not just a moral imperative but a strategic necessity.²⁸ The international community must continue to foster cooperation, share knowledge, and pool resources to build a more resilient global healthcare infrastructure.

Additionally, health crises underscore the critical role of rapid diagnostics, not only in disease management but also in resource allocation and containment efforts. Investment in research and development, as well as the establishment of robust diagnostic infrastructure, is imperative to ensure timely and accurate identification of pathogens and the swift deployment of effective interventions. A socio-legal perspective has illuminated the complex dynamics at play during health crises, emphasizing the need for transparent, accountable, and ethical responses. Identifying risk targets within vulnerable populations, addressing disparities in healthcare access, and striking a balance between public health imperatives and individual rights are all crucial components of a comprehensive response.

In the face of health crises, societies worldwide have demonstrated resilience, adaptability, and compassion. These challenging times have led to scientific breakthroughs, innovative healthcare solutions, and a renewed focus on public health. As we navigate the uncertain future, the lessons learned from health crises

²⁶ Gostin, L. O., & Hodge Jr, J. G. (2001). Personal privacy and common goods: a framework for balancing under the national health information privacy rule. *Minn. L. Rev.*, 86, 1439.

²⁷ Sharma, A., & Singh, B. (2022). Measuring Impact of E-commerce on Small Scale Business: A Systematic Review. *Journal of Corporate Governance and International Business Law*, 5(1).

²⁸ Haiti, D. (2023). Access to a COVID-19 Vaccine and Prevention of Counterfeiting in Indonesian and International Health Law: A Comparative Approach. *International Journal of Criminal Justice Sciences*, 18(1), 148-171.

and global pandemics must guide our efforts to build more robust, equitable, and prepared healthcare systems. In doing so, we can aspire to a world better equipped to confront and overcome the health challenges that lie ahead, ultimately ensuring the well-being and prosperity of all its inhabitants.²⁹

The future of addressing health crises and global pandemics holds both challenges and opportunities that demand proactive and innovative strategies. To effectively prepare for and respond to future crises, several recommendations and possibilities emerge. The investment in Global Health Infrastructure: Governments, international organizations, and philanthropic entities should significantly invest in building and strengthening global health infrastructure. This includes bolstering healthcare systems, expanding healthcare access, and establishing rapid response teams. Adequate funding for research and development in diagnostics, treatments, and vaccines is also paramount. The major points are as-

- i. **Pandemic Preparedness Frameworks:** Developing comprehensive pandemic preparedness frameworks that outline roles, responsibilities, and response mechanisms for various stakeholders, from governments to healthcare institutions, is essential. These frameworks should emphasize international collaboration, data sharing, and resource mobilization.
- ii. **Technological Advancements:** Leverage emerging technologies, such as artificial intelligence, big data analytics, and telemedicine, to enhance disease surveillance, early detection, contact tracing, and remote healthcare delivery. Innovations in rapid diagnostic tools should continue to be a priority, enabling swift identification of pathogens and informed decision-making.
- iii. **Global Vaccine Equity:** Ensure equitable access to vaccines and medical supplies worldwide. The COVAX initiative serves as a model for collaborative efforts to distribute vaccines more fairly. This approach should be extended to address other diseases and medical resources, reducing health disparities between nations.
- iv. **International Cooperation and Diplomacy:** Strengthen international cooperation and diplomacy in public health. Treaties and agreements that facilitate information sharing, resource allocation, and coordinated responses should be prioritized. Establishing a framework for mutual assistance during crises is essential.
- v. **Health Education and Communication:** Invest in health education and communication strategies to promote public understanding of the importance of vaccinations, preventive measures, and responsible health behavior during outbreaks. Clear and transparent communication is key to building trust and adherence to public health guidelines.
- vi. **Capacity Building in Vulnerable Regions:** Focus on capacity building in regions with limited healthcare infrastructure and resources. This includes training healthcare workers, enhancing laboratory capabilities, and improving healthcare supply chains to ensure a more robust response to health crises.
- vii. **Ethical and Legal Preparedness:** Develop and update ethical and legal frameworks that balance public health imperatives with individual rights. Preparedness should include the establishment of mechanisms for rapid legal responses to crises while protecting civil liberties.
- viii. **Research and Surveillance:** Encourage continuous research on emerging pathogens and surveillance systems to monitor disease transmission. Investment in data collection and analysis is vital for early warning and response.
- ix. **Resilience and Adaptability:** Cultivate a culture of resilience and adaptability within healthcare systems, enabling rapid adjustments in response to evolving health crises. This includes flexible staffing models, surge capacity planning, and maintaining strategic stockpiles of essential medical supplies.
- x. While health crises and global pandemics pose significant challenges, they also provide opportunities to strengthen our collective response to future threats. By implementing these

²⁹ Singh, B. (2023). Blockchain Technology in Renovating Healthcare: Legal and Future Perspectives. In *Revolutionizing Healthcare Through Artificial Intelligence and Internet of Things Applications* (pp. 177-186). IGI Global.

recommendations and embracing innovation and cooperation, we can build a more resilient and prepared global healthcare system capable of safe guarding the health and well-being of populations across the world.

THE CHICAGO TRIAL VIS A VIS RIGHT TO PROTEST IN INDIA

Aniket Jadhav*

Abstract

With regard to trials involving strong historic pertinence, it is not an easy task to maintain a balance between what happens in the courtroom and what happens outside whilst the trial is being conducted. Both the trial inside and the movement that was happening outside simultaneously, was equally more engaging. “The Chicago trial” outlines the topic of a significant civil rights that took place in Chicago over several months from September 1969 to February 1970. It is majorly a courtroom drama but with the backdrop of flashback to events which happened during the Democratic National Convention in August 1968, and which are discussed during the trial of the Chicago. This follows the Chicago Seven, a group of anti-Vietnam War protesters charged with conspiracy and crossing state lines with the intention of inciting riots at the 1968 Democratic National Convention in Chicago.

In the context of India, the abstract analyzes the parallels and divergences between the Chicago trial and the right to protest in the Indian legal framework. It explores the constitutional provisions and judicial interpretations related to the right to protest in India, examining landmark judgments and the evolving understanding of this fundamental right. The abstract delves into the challenges faced by protestors in India, such as restrictions imposed by authorities, allegations of excessive force, and the criminalization of dissent. It also addresses the importance of striking a balance between the right to protest and maintaining law and order. Through a comparative lens, the abstract highlights the lessons that India can draw from the Chicago trial, including the significance of robust legal safeguards for peaceful protests, ensuring transparency and accountability in law enforcement, and fostering a culture of open dialogue and democratic participation. By examining the Chicago trial and its implications for the right to protest in India, this abstract, aims to contribute to the ongoing discourse surrounding the protection of civil liberties and the promotion of democratic values in both jurisdictions.

Keywords: *Chicago Trial, Right to Protest, Civil Rights, Indian legal framework, Comparative analysis.*

I. Introduction

In the tumultuous era of protests during the Vietnam War, few trials garnered as much attention as the 1969 trial of the Chicago Seven. This trial emerged from a series of demonstrations held in Chicago during the 1968 Democratic National Convention, where anti-war protestors clashed with local police, diverting attention from the convention itself. Initially, a grand jury indicted eight individuals, but one was separated from the case, leaving seven defendants.

The administration chose to prosecute these individuals under the Anti-Riot Act, an amendment to the Civil Rights Act of 1968¹, despite the fact that municipal breach of the peace statutes might have been more fitting. This controversial law made it a federal offense to engage in interstate travel to incite or participate in riots. Prominent Americans raised concerns, arguing that this law jeopardized First Amendment rights² by equating political protest with organized violence. However, the convictions were later voided by the

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¹ Civil Rights Act 1968, Pub. L. 90–284, 82 Stat. 73, enacted April 11, 1968.

² United States Bill of Rights, U.S. Const. Amend. 1-10.

Seventh Circuit Court of Appeals due to a series of procedural irregularities, including limitations on jury selection, judicial bias, and wiretapping of the defendants' counsel.

In the realm of democratic societies, the right to protest is a fundamental cornerstone of civil liberties, enshrined in the constitution to safeguard the voice of the citizenry. Within the framework of the constitution, specifically under Article 19(1)(a), Article 19(1)(b), and Article 19(1)(c), individuals are endowed with the rights to freedom of expression, peaceful assembly, and the formation of associations or trade unions. These constitutional provisions empower citizens to engage in peaceful demonstrations, allowing them to challenge the actions of the government or any entity on matters of national or social importance.

The right to protest assumes a pivotal role in the functioning of a democratic society, serving as a mechanism through which citizens can advocate for their interests and hold authorities accountable. However, like any fundamental right, the right to protest comes with certain restrictions. While nonviolent forms of protest are generally accepted and protected, there are limitations. Protests that jeopardize the security of the state, disrupt friendly relations with neighbouring nations, violate public order, show contempt for the judicial system, or threaten the integrity and sovereignty of the nation may be subject to legal consequences.

II. Historical Backdrop

The 1960's was the most disturbing period in US history post the World War 2. The Vietnam war and the civil rights movement gave rise to counterculture which fought for human rights, equality, non-violence, peace and civil liberties above all. The trial of the Chicago 7 is set in this era. A set of peaceful protesters were accused of inciting a riot in Chicago even though they were only part of the protest and had not involved in rioting. The Government which sees these elements as a threat to the established order, wanted to silence them and even the judiciary and prosecution is biased in favour of the Government.

In Chicago 1968, the Democratic Party Convention was met with protests from activists like the moderate Students for a Democratic Society led by Tom Hayden and the militant Youth International Party - 'Yippies' led by Abbie Hoffman and Jerry Rubin, which led to violent confrontations with the local authorities. As a result, seven of the accused ringleaders were arraigned on charges like Conspiracy by the hostile Nixon administration, including Bobby Seale of the Black Panthers who was not involved in the incident. What follows was an unfair trial presided by the belligerent Judge Hoffman and prosecuted by a reluctant but duty-bound Richard Schultz. As their pro bono lawyers face such odds, Hayden and his fellows were frustrated by the 'Yippies' outrageous antics undermining, their defence in defiance of the system, even Seale is denied a chance to defend himself his way. Along the way, the Chicago 7 clash in their political philosophies, even as they learn they need each other in this fight.

The Chicago 7 was a group of left-wing activists who were charged with conspiracy and crossing state lines with the intention of inciting a riot during the Democratic National Convention which was held in Chicago in August 1968. The activists alleged about the US foreign policy (the war in Vietnam) and the US domestic policy (the persecution of the civil rights movement within the US). The issue raised at the convention was the US involvement in the Vietnam war where every month thousands of American soldiers were dying; the situation was getting worse day by day. The protestors were seen mobilizing in large groups wherever possible. Hence, to curb the dissent mayor Richard Daley blatantly refused permission to protests. To control the situation, curfew was imposed by the mayor in Illinois, Chicago but thousands of protestors marched towards the Lincoln Park. The situation worsened when the police used the tear gas to disperse the mob, subsequently the protest turned violent and retaliated the attack by the police. National Commission on the Causes and Prevention of Violence found that the police responded to taunts with

"unrestrained attacks," and the episode came to be called as a "police riot."³ The aftermath marked the trail of the eight defendants—Rennie Davis, David Dellinger, John Froines, Tom Hayden, Abbie Hoffman, Jerry Rubin, Bobby Seale, and Lee Weiner who all were tried under the newly-passed Civil Rights Act of 1968, that made it a federal crime to cross state lines with the intent to incite a riot.

III. The Trial

Towards the beginning, when the first day of the trial is about to begin, Bobby Seale- the then Chairman of black Panthers, refused to get represented by the two lawyers who were representing the defendants. Hence total eight were under trial but the lawyers represented for the seven. The activists were arrested for their anti-war activities during the Democratic National Convention in the year 1968. A chronicle of riot occurred during the convention and on that basis eight activist were imprisoned and put under trial.

The trial began to be heard in the U.S. District Court for the Northern District of Illinois, that lasted for about six months starting from September 24, 1969, to February 18, 1970. The presiding Justice Hoffman was having impartial prejudices against the defendants; One such instance where his prejudices can be proved is when he rejected many of the pretrial motions of the defence counsel but at the same time granted those made by the prosecution. His trial was favourable to the prosecution i.e., the government and the police. Seale was bound and gagged in the middle of the trial that went down as a disgraceful act by the judiciary in American history depicting racial terrorism.⁴ As Seale earlier refused to be represented by the two lawyers of the defendants he was tried alone and was also sentenced for four years imprisonment for contempt of court. The defendants constantly interrupted to protest unfair rulings by the judge. The trial became a raree-show, that was constantly receiving intense media coverage. Later, the convictions were subsequently overturned on appeal, but the trial remained a political and cultural touchstone, a mirror of the deep divisions in the country.

While the jury deliberated on the verdict, Judge Hoffman cited all the defendants—plus their lawyers for Contempt of Court. William Kunstler was given four years in prison for addressing him as "Mr. Hoffman" instead as "Your Honor;" Abbie Hoffman received eight months for laughing in court; Hayden got one year for protesting the treatment of Seale, and Weiner two months for refusing to stand when Judge Hoffman entered the courtroom. On February 18, 1970, each of the seven defendants was acquitted of conspiracy. Two (Froines and Weiner) were acquitted completely, while the remaining five were convicted of crossing state lines with the intent to incite a riot. On February 20, they were sentenced to five years in prison and fined \$5,000 each. But two years later, on November 21, 1972, all of the convictions were reversed by the United States Court of Appeals for the Seventh Circuit, which deemed that Judge Hoffman had been biased in not permitting defence attorneys to screen prospective jurors for cultural and racial bias. The court also determined that the FBI had bugged the defence lawyers' offices. The Justice Department decided against retrying the case. The contempt charges were retried before a different judge, who found Dellinger, Rubin, Hoffman, and Kunstler guilty of some of the charges, but did not sentence them with any fines or prison time.

IV. Epilogue

Fifty years later, the Chicago 7 story remains relevant. In the five decades since those violent days at the Democratic Convention, Abbie Hoffman, Tom Hayden, Jerry Rubin, and David Dillinger have all passed

³ National Commission on the Causes and Prevention of Violence. (1969). *To Establish Justice, To Insure Domestic Tranquility: A Report of the National Commission on the Causes and Prevention of Violence*. New York: Bantam Books.

⁴ Sorkin, Aaron, director. *The Trial of the Chicago 7*. Netflix, 2020.

away, while Bobby Seale, Rennie Davis, John Froines and Lee Weiner are still alive. Last August, Weiner published a memoir about his experience. Last year, with the ongoing protests against police brutality and the public outcry about the deaths of George Floyd, the story of the Chicago 7 and the riots of 1968 felt all too prescient.

V. Critical Analysis

The USA's Judiciary here is seen as an unjust police state with major inequities being exacerbated by an unfair and corrupt judicial system that targets dissenting and marginalized groups. That works favourably in favour of the Government and Justice Hoffman was an example of such prejudice; The trial's testimony of the police and FBI, made all the easier by the Judge Hoffman's ceaseless intervention on behalf of the prosecution that caused great hinderance towards the defendants' case. Defence team was not permitted to cross examine the prosecution witnesses effectively, thus this was the one avenue left that too was all readily blocked by Judge Hoffman. He adamantly opposed the defence through the whole case. He barely listened to their arguments. He sustained every objection of the prosecution, often without a reason for the objection being given or any explanation of why the objection should be sustained. To a degree, he's correct; he doesn't have to explain his reasoning. He repeatedly instigated reference to forthcoming contempt sentences for all of the defendants and both of their defence attorneys. When the sentences came down, they ranged from six months to four years. These were all later overturned because of what the appeals court recognized later as an overreaction and an overreach by Hoffman that was seen in many errors, biases, and discriminatory judgements against the defendants and their lawyers. Secondly, A lot has been debated over years about the negative reporting of media and its uncensored coverage that helped to undermine support for the US -Vietnam war in the States, the Trial of the Chicago 7 talks about all.

VI. Trial – An Indian Overview

Judiciary is one of the main pillars in Indian democracy. It functions for safeguarding the fundamental rights of the citizens. It has vast power vested in it whether it is in form of writs or judicial review, the principle of separation of powers in the Indian constitution gives us an independent judiciary. The function of justice is a kind of judicial philosophy where judges are humans who are likely to be influenced by their fairness as well as prejudices. When trial is conducted inside the courtroom, the judges inside the courtroom shall not get affected by the events happening outdoors, that might be having directly or indirectly influence the trials. Social inclination and class interests of judges shall not overpower the principles of justice enshrined in the Indian constitution. The trials in India see similar prejudices where access to justice is delayed to the downtrodden and oppressive castes/class of the society. When it comes to representation of the Scheduled Castes (SC) and Scheduled Tribes (ST), in India's prisons, it is found that these categories are over-represented in jails where the groups account for 24% of India's population and their representation in prisons is significantly higher, at 34%.⁵ According to the 'Criminal Justice in the Shadow of Caste' report one in every three prisoners in India belongs to the SC/ST community. While the facts came out of this report is infuriating and also the cause of such negative over representation of these community raises questions on the investigating agency, the role of police, the reason for prolonged delay in getting bail to these undertrials.

The judiciary have failed miserably in doing justice to these underprivileged sections who have been historically in a disadvantage position, socially and economically due to so called lower status of their castes. They have been kept in a standstill for years and decades without acquittals or convictions. Criminalization of particular castes is an old task in India that was prevalently seen in the British Era when the British Raj came up with the *Criminal Tribes Act 1871*,⁶ wherein the list was prepared in which the de-

⁵ Criminal Justice in the Shadow of Caste: Study on Discrimination Against Dalit and Adivasi Prisoners & Victims of Police Excesses. New Delhi: National Dalit Movement for Justice – NCDHR.

⁶ Criminal Tribes Act 1871.

notified tribes and nomadic tribes and other such ethnic or social communities in India were defined as "addicted to the systematic commission of non-bailable offences" such as thefts, by the British raj. Hence even after more than seven decades of independence of India, we are still lagging behind to uplift such castes' social position and bring them in a mainstream acceptable society. Even category named 'eunuch' was added in the list wherein third genders were criminalised. This is one such example of how caste and crime are interlinked in India. Looking at the current pretext, the underlying cause of majority SC/ST undertrials in prisoners is due to difficulty in getting bails this is because the major population in the prisoners are young but poor and illiterate, lack of legal aid and money unable them to get a bail even for petty offences. Secondly, the police investigation is seen biased when the victim is particularly from SC/ST community thus, there is a delay that begins with the investigation itself, by the time it reaches the doors of court, the judiciary does nothing helpful to make relieve them.

VII. Right to Protest- An Indian Purview

The constitution specifies the right of protest in fundamental rights, not implicitly but through provisions in article 19(1)(a), 19(1)(b), 19(1)(c). These provisions enable citizens to assemble for peaceful protests. Right to protest is significant in every democratic country. Citizens can act as a watchdog to the actions of government. The protest gives them the right to be heard and give dissent for wrongful acts. Democracy and dissent go hand in hand.

Although it is not explicitly mentioned as a fundamental right in the Constitution. This right can be derived primarily from Article 19,⁷ which encompasses the Right to Freedom of Speech and Expression, Right to Association, and Right to Peaceably Assemble.

- i. Article 19(1)(a): This provision transforms into the right to freely express an opinion on the government's conduct. Citizens can openly criticize and question government actions.
- ii. Article 19(1)(b): The Right to Association allows the formation of political associations, which can collectively challenge government decisions, enabling citizens to engage in political activism.
- iii. Article 19(1)(c): The Right to Peaceably Assemble grants the freedom to protest through demonstrations, agitations, and public meetings, forming the basis for sustained protest movements.

These rights collectively empower citizens to assemble peacefully and protest against governmental actions or inactions. It functions as a crucial mechanism for citizens to act as watchdogs, continually monitoring government actions, and providing feedback.

A. Restrictions on Right to Protest

- i. Article 19(2): Imposes reasonable restrictions on the right to freedom of speech and expression in the interests of various crucial aspects, including the sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality, contempt of court, defamation, and incitement to an offense.
- ii. Article 51A: Resorting to violence during protests is a violation of a fundamental duty outlined in Article 51A, which requires citizens "to safeguard public property and to abjure violence."

It was observed in *Amit Sahni v. Commissioner of Police*⁸ aka Shaheen Bagh Protest case.

"India, as we know it today, traces its foundation back to when the seeds of protest during our freedom struggle were sown deep, to eventually flower into a democracy. What must be kept in

⁷ The Constitution of India, 1950, Art. 19.

⁸ *Amit Sahni v. Commissioner of Police*. Civil Appeal No. 3282 Of 2020 (SC).

mind, however, is that the erstwhile mode and manner of dissent against colonial rule cannot be equated with dissent in a self-ruled democracy. Our Constitutional scheme comes with the right to protest and express dissent, but with an obligation towards certain duties.”

While it was observed in *Rakesh Vaishnav & Ors. v. Union of India & Ors.*⁹ aka Farmers Protest Case.

“We clarify that this Court will not interfere with the protest in question. Indeed, the right to protest is part of a fundamental right and can as a matter of fact, be exercised subject to public order. There can certainly be no impediment in the exercise of such rights as long as it is non-violent and does not result in damage to the life and properties of other citizens and is in accordance with law.”

Hence, by these recent understanding of the judgements it can be concluded that Judiciary has an important role to play in safeguarding the rights of citizens and give voice to the dissent in democracy. In India, we see two findings where on one hand there is apathy in providing speedy justice to the marginalized class due to prolonged trials but on other hand it can also be seen that the judiciary in India is ensuring its citizen right to protest, and the apex court is taking all the necessary step to provide them access to their fundamental right of protesting.

B. Other prominent Supreme Court's Judgments

- i. *Mazdoor Kisan Shakti Sangathan v. Union of India*¹⁰: A 2018 judgment addressed demonstrations at Delhi's Jantar Mantar, aiming to strike a balance between the interests of local residents and protesters. The court directed the police to create a proper mechanism for the limited use of the area for peaceful protests and lay down parameters for this purpose.
- ii. *Ramlila Maidan Incident v. Home Secretary, Union of India & Ors.*¹¹: The Supreme Court emphasized that citizens have a fundamental right to assembly and peaceful protest, which cannot be arbitrarily taken away by the executive or legislative action. This case underscored the significance of protecting the right to protest as an essential democratic element.

In conclusion, the Indian Constitution, through its provisions and supported by relevant Supreme Court judgments, acknowledges and protects the right to protest as a crucial aspect of democracy. While citizens have the right to voice their dissent, reasonable restrictions are imposed to ensure the integrity and security of the State. Balancing these rights and responsibilities is vital to maintaining a democratic and orderly society.

VIII. Suggestions for the prospective amendments and Changes with regard to Right to Protest

Reforming the Judicial Process for Speedy Trials, in order to address the issue of delayed justice, it is imperative to introduce measures that expedite the judicial process, particularly for underprivileged sections of society. One way to achieve this is by setting clear timelines for the completion of trials. Special courts dedicated to cases involving marginalized communities can also be established to ensure that justice is accessible to all, irrespective of their social or economic background. By implementing better case management techniques, such as reducing adjournments and optimizing resource allocation, the judicial system can significantly reduce delays and the backlog of cases, ensuring a swifter and more efficient legal process.

⁹ *Rakesh Vaishnav & Ors. v. Union of India & Ors.* [2020] Writ Petition(s)(Civil) No(s).1118/2020 (SC).

¹⁰ *Mazdoor Kisan Shakti Sangathan v. Union of India*, W.P. (Civil) No. 1153 of 2017, Supreme Court of India, (2018)

¹¹ *Ramlila Maidan Incident v. Home Secretary, Union of India & Ors.*, SUO MOTU WRIT PETITION (CRL.) NO. 122 OF 2011, Supreme Court of India, (2012).

Ensuring that justice is accessible to all citizens, requires a substantial improvement in the availability and accessibility of legal aid services. Allocating additional resources to expand and enhance legal aid programs is essential. Effective policy with regard to Article 39A¹² of the Indian Constitution will significantly contribute to providing adequate representation for marginalized communities. These efforts will address the issue of inadequate legal representation and help level the playing field in the legal system.

To eliminate discriminatory practices and laws that unfairly target specific castes or communities, it is crucial to conduct comprehensive surveys with respect to National Crime Record Bureau Data(s),¹³ Outdated and discriminatory provisions should be identified and repealed promptly. This process should align the legal framework with modern principles of justice, equality, and human rights, fostering a fair and inclusive legal system that upholds the dignity and rights of all individuals.

Enhancing Access to Bail, reforming bail procedures is essential to make them more accessible and affordable, particularly for minor offenses. Reviewing bail amounts and reducing the financial burden on individuals seeking bail can facilitate their release and ensure that bail decisions are based on the merits of the case rather than the economic status of the accused. This approach aligns with Article 14, 19, and 21 of the Indian Constitution¹⁴ that aims to promote the principle that no one should be deprived of their liberty solely due to their inability to pay.

Monitoring Police Conduct, to address allegations of police bias, misconduct, and unfair investigation practices, especially when cases involve marginalized communities, an independent oversight body should be established. This body should be responsible for monitoring and investigating such allegations, ensuring accountability within law enforcement agencies. Implementing measures to hold these agencies accountable for any discriminatory behaviour or abuse of power is essential to building trust in the justice system.

The right to protest is a fundamental democratic right that must be explicitly protected by legislation, emphasizing non-violence and respect for public order. Enacting laws that safeguard this right and ensure that the process for granting protest permits is transparent and non-discriminatory is essential. These measures prevent undue restrictions on the right to peaceful assembly, preserving an essential aspect of democracy and civil liberties.

IX. Conclusion

The trial inspires us for the spirit to fight for justice, question the system, the redundant policies while also makes us think about the racial disparities that persist at every level from misdemeanor arrests to trials. This trial is a guiding force for law students and lawyers across the globe, as the ultimate aim of law is to serve justice and hence the ultimate aim of the legal fraternity should also be the commitment to justice; commitment to rule of law. This trial aptly stated the challenges and need for civil rights centric justice system. The team fight against all odds to put their side of story, it shows how corrupted the system is and how the justice system can abuse their power and bully others in unfavourable positions. Yet it's so captivating because it captures the moments of people coming together making a difference. It shows how much hard work, thoughts, and preparation is put into when navigating politics and guiding others to protest peacefully. People have no issues with the institution and the government body, the problem is the people who are running these institutions. What makes this even more thrilling is how closely this trial represents our current situation, it is a story that reinstates hope in diversity, freedom to protest and dissent. The message is relevant in these times, where public dissent is perceived as vitriol and is morphed as anti-

¹² The Constitution of India, 1950, Art. 39A.

¹³ NCRB. (2021) Crime in India.

¹⁴ The Constitution of India, 1950, Art. 14, Art. 19, and Art. 21.

nationalistic, so as to quell the core of the dissent. Not much has changed even decades later and this movie makes us torment with our thoughts on it.