India Foundation Journal

Vol. IV
Issue No.3

May - June 2016

Editor
Shakti Sinha

Assistant Editor
Srihari Avuthu

Publisher
India Foundation
New Delhi

E-mail
mail@indiafoundation.in

Website
www.indiafoundation.in

for private circulation only

Editor's Note

Dear Readers,

India Foundation is proud to have co-hosted with the Indian Council of Philosophical Research (ICPR) a three day seminar on Hindu Law. Speakers at the seminar presented fascinating aspects of the evolution, diversity, comprehensiveness and continued challenges facing Hindu Law. Rarely has a society or religious tradition undergone such revolutionary changes, and regeneration, as has Hindu society in a short span of less than two centuries. And yet, these changes were not mindless changes in reaction to colonialism and foreign economic exploitation on a scale unseen in human history. Rather thought leaders, monks, intellectuals and ordinary 'grihasths', faced with momentous changes introspected, reviewed traditions, identified weaknesses and distortions and built on received wisdom than demolish it altogether. We present a report on the seminar as well as four representative papers that we hope would draw attention to this important facet of Indian society, showing its resilience and openess to new ideas and thoughts.

We are also extremely happy to have hosted, and felicitated H.E. Shri Maithripala Sirisena, President of Sri Lanka when he visited Delhi and held talks with PM Narendra Modi, before they proceeded to Ujjain for the Simhasta. Over the years, India Foundation has engaged in building deep relations with India's neighbours including Sri Lanka, Bangladesh and Myanmar. This has since been extended to Iran to which a delegation went recently, interacting with think tanks, the local strategic community and important policy makers.

India Foundation and Heritage Foundation hosted a seminar in Washington DC to assess the security and strategic outcomes on the Prime Minister's visit. In this issue we also look at certain aspects of the Modi sarkar's vision and achievements and review developments in the Af-Pak region, which continues to pose a challenge not just to India but to the world. Our regular programs continue and we have a bust six months ahead with flagship events and new initiatives which we would keep our readers posted about.

◆◆◆

TABLE OF CONTENTS

FOCUS: Hindu Jurisprudence

OP-EDs

REPORTS

BOOK REVIEW

Law is a Branch of Dharma[1]

*Justice L. Narasimha Reddy

By and large, not only people in general, but also many in the legal circles, perceive Hindu Law to be the one contained in the Four Enactments brought into existence by the Parliament a few years after independence *i.e.*, the Hindu Marriage Act 1955, Hindu Succession Act, 1956, Hindu Minority and Guardianship Act, 1956, and the Hindu Adoption and Maintenance Act, 1956. That is considered to be the personal law of the people, who practice Hinduism.

This, however, is not a correct perception. If one closely analyses the subject, it emerges that the law pertaining to marriage, succession, adoption and maintenance is a small fraction of the Hindu Law that remained in force, till the invaders have brought into existence their own system of laws. Hindu Law, as it existed then, covered many substantive facets of law, as well as a detailed and perfect procedure of adjudication. Added to that, the entire edifice of Hindu Law rested upon the foundation of Dharma, in contradistinction to need and expediency, that constitute the basis for the English Law. Dharma is a very wider concept and law is a small branch of it. There is no equivalent term for Dharma in English. In a way, it can be said that Dharma is a distilled form of ancient Indian literary wealth, that includes, the Vedas, the Smritis, the Puranas and the commentaries by the sages and the learned people. It is such a typical and complex phenomenon that it is not amenable to any precise definition. Whenever a concept or phenomenon is incapable of being defined, at least one can present it by way of description. In case of Dharma, however, even description would be either inadequate or incomplete. In his treatise, Hindu Law and usage, John D. Mayne said, "According to Hindu conception, Law, in the modern sense, was only a branch of Dharma, a word of widest import and not easily rendered into English." F.D. Mulla, in "Hindu Law", observed, "Law, as understood by the Hindu, is a branch of Dharma."

Dharma not only exhorts the people to acquire qualities, such as truthfulness, non-violence, respect to the persons around, and the creation at large, compassion towards the needy, but also to desist from being greedy, dishonest, unfaithful, etc. In the Encyclopaedia of Hinduism, it is mentioned: "Down the ages, the word (Dharma) has been used to mean religion, law, duty, religion's right or duty, code of conduct etc. The well-known Dharmashastras are those authored by the Sages like Gouthama, Bhoudhayana, Apastamba, and Vashista.

[1]It is the text of the key-note address delivered on 16th May, 2016 at the National Seminar on Hindu Jurisprudence jointly organized by Centre for Constitutional and Legal Studies (CCLS) of India Foundation and Indian Council of Philosophical Research.

**Justice L. Narasimha Reddy is a former Chief Justice of Patna High Court.*

All of us are aware that Hinduism is one of the oldest civilisations in the world. Over the millennia, the Sages and Rishies have presented to the mankind, the knowledge of highest order, even according to the modern standards; in almost all the fields; be it, Chemistry, Alchemy, Medicine, Astrology, Philosophy, Economics, Astronomy, Political Science, Spirituality, Environmental Science, Sculpture, Architecture, etc. The Sanskrit language in which all these scriptures were written was almost kept out of use, during the alien rule, spread over about 1000 years. It is only in certain cases that the private agencies preserved the literature and continued learning. In certain other cases, countries like Germany were benefited by undertaking study of some of the scriptures and the Sanskrit language. The greatness of the ancient India's contribution to various fields of study can be illustrated by taking one or two examples.

For the subject of Anatomy, in the undergraduate courses of medicine, almost all over the world, the text book is the one, authored by "Grey". The Chapter pertaining to "Plastic Surgery" in that book commences with a sentence, which reads 'the First Plastic Surgery was conducted by Sushrutha'. Albert Einstein, the famous Scientist acknowledged that but for the invention of 'Zero' in ancient India, the progress in the modern science would not have been possible. After conducting a detailed research, one Mr. Emmanuel found that the quadratic equation, whose invention was attributed to Sir Isaac Newton, has, in fact, originated in Kerala. There are hundreds of such examples. It is not without reason that the renowned companies such as Google are celebrating the centenary of Sreenivasa Ramanujam, the Great Mathematician, who has just provided the taste of ancient Mathematics to the western world.

The achievement of ancient India, in the field of law is almost on the same lines. During the Vedic period, the life of citizens used to be guided by the practices ordained in them. With the passage of time, the necessity to prepare a code of conduct based on the high values, including those enunciated in Vedas was felt. Such codified forms came to be known as Smritis. The first Smriti was handed out to the humanity by Manu. Now-a-days, we find certain organisations and individuals exhibiting their utmost contempt towards Sage Manu and his works, in the name of progressive thinking and modern culture. It is relevant to mention here that during the Mohammedan's Rule, excepting the fields of Criminal Law and Personal Law, of those who do not practice Hinduism, Hindu Law continued to be applied in the legal systems. Similarly, during the British Rule also, principles of Hindu Law were never disregarded. On the other hand, they were viewed with utmost respect and British Judges, particularly, those in the High Courts in India and Privy Council in England made every effort, to understand and analyse them. Almost 50% of the judgments of the Privy Council, during the British Rule dealt with the principles of Hindu Law. Today, we don't find any parallel to them. For instance, in Sri Bulusu Gurulingaswami vs. Sri Bulusu Ramalakshmamma, XXVI Indian Appeal (1898 and 1899), the Privy Council dealt with the question as to whether the only son of a couple can be given in adoption. Lord Hob House took note of all the Smritis and commentaries on the subject and he commenced his discussion by

observing, "the most Revered of all the Rishies or Sages is Manu…."

The discussion undertaken by the Privy Council on a question, which may appear in the so-called modern times to be trivial, is indeed astonishing. Copious reference was made to the Manu Smriti, Dattaka Meemamsa, commentaries by Sages and modern jurists and views of judges in various cases.

"No distress existing, the giver commits a sin on account of the prohibition". If then the giver commits a sin, the taker who enables him to do it cannot be free from sin; and if the commission of a sin makes the transaction void in law, there can be no gift and consequently no adoption. And yet nobody contends for the legal force of this prohibition. It does not appear that in cases of adoption any inquiry is ever made about the distress of the natural father."

As regards the law that was being enforced during British Rule, the Bench observed: "…The British rulers of India have in few things been more careful, than in avoiding interference with the religious tenets of the Indian peoples."

The reason underlying the respect shown to such principles was; in the words of the same learned Judge, "…They (the tenets) provide for the peace and stability of families by imposing limits on attempts to disturb the possession of property and the personal legal status of individuals." In contrast, in the name of so-called modernism and progressive thinking, we do not hesitate to brand any ancient principle of law or tenet to retrograde or to condemn it.

The efforts made by the Judges to know the law which is mostly in Sanskrit, can be gauged from the following passage of the same judgment: "Their Lordships have, however, one advantage over their predecessors in these inquiries. The greater attention paid of late years to the study of Sanskrit has brought with it more translations of the sacred Hindu books, and closer examinations of texts previously translated. And in the Allahabad case especially, the appellants' side was argued in the High Court by Mr. Banerjee, who is stated by the Court to be familiar with Sanskrit, and it is the subject of a very elaborate judgment by Knox J., who is a student of Sanskrit, and, as he tells us, has paid special attention to the books of Manu and Vasishtha." Many so-called legal luminaries of the modern time would have pitied Justice Knox, for his wasting time in learning Sanskrit and reading books by Manu and Vasishtha.

As mentioned earlier, after Manu, several sages bestowed their attention to the codification of the law. The prominent among such Smritis are those of Yagyavalkya and Katyayana. Yagyavalkya himself referred to as many as 20 Sages from whose work, he took assistance. In addition to the Smritis, treatises like Dattaka Meemamsa, Vyavahara Chandrika, Antakshara Dayabhaga, Vivadha Chintamani, to mention a few, have come into existence. Broadly, four schools, *viz.*, Mithila School, The Bombay School, the Madras School and the Bengal School represented the Hindu Law, with slight difference as to approach on certain aspects in the respective areas.

The greatness and perfection in approach in these Smritis and other ancient texts on law is in no way comparable to the laws that existed during the subsequent periods. For instance, in any and every legal system, adjudication is the principal activity and the outcome of the adjudication is the

judgment. To my knowledge there does not exist any precise definition of judgment, either in procedural or in substantive laws, particularly the laws that are in force in India. In his Dharmakosa, Sage Vyasa defined the judgment in the following verse:

Purvothare kriyapadam
Pramanam tat pareekshanam
Nigadam smrithi vakyancha
Yada sabhyam Vinischite
Jayapatrabhilekhayet

It means that a judgment should contain the gist of

a) purva, (purva paksha i.e. plaint),
b) uttare (uttarapaksha i.e. the statement),
c) kriyapadam (issues),
d) pramanam (evidence),
e) tatparikshanam (its analysis),
f) nigadam (argument of an advocate),
g) smriti vakya (relevant provisions of law),
h) sabhaya vinischitam (opinion of the judges),
i) Jayapatraha (Royal seal)

One cannot even substitute a syllable, to such a perfect definition of an important stage in the adjudication.

Though, people talk of honesty and integrity of judges, day in and day out, we do not find any specific code of conduct in the general law. In Shukraneethi, a sloka depicts how an adjudication gets adversely effected or ceases to be impartial. He says,

Pakshapathadhiropasya karananicha panchavye
raga lobha bhaya dvesha vadhinocha rahashrutani.

It means that there are five reasons, on account of which a Judge ceases to be impartial. They are raga (affection), lobha (greed), bhaya (fear), dvesha (hatred), vadinocha rahashrutani, (discussing with the party to the proceedings secretly). Every meticulous aspect regarding the manner in which the proceedings must be conducted in the Court, were covered.

The enunciation of a principle or theorem i.e. sutra is common to all fields of study. A sutra almost resembles a definition. Even in modern field of study, we lack the definition of a theorem or principle. In one of the ancient works, the characteristics of the sutra are enunciated in a sloka which reads:

Alpaksharam Asangdhigdam
Saravath Viswathomukam
Asthobhana anavadhyancha sutram sutro vidhuhu.

According to this, a sutra is the one which is,

a) Alpaksharam (precise),
b) Asangdhigdam (unequivocal)
c) Saravath Viswathomukam (it carries the same meaning everywhere),
d) Asthobha (it should not be the result of theft i.e. plagiarism),
e) Anavadhyancha (its text or context should not be a prohibited one).

In the field of interpretation Sage Jaimini made substantial contribution through his work on Mimamsa. For example, he said that if a provision just gives a command, it is 'Vidhi' and is binding whereas, if the text proceeds to furnish the reason, or basis for the command, it is 'Arthavada' and does not command the same binding force as does the 'Vidhi'.

What is mentioned above are only miniscule of the treasure of great knowledge. An eminent Indian jurist like Nani Palkhiwala paid encomiums to rich cultural heritage of ancient India.

For one reason or the other, we deprived not

only to ourselves, but also to the rest of the world, the benefit of great ancient works in the field of law, on account of our indifference or ignorance. There is a general saying that the easiest way to get recognition as an 'intellectual' in India, is to denigrate anything which is associated with the ancient Indian culture. Field of law no exception. If an advocate refers to ancient texts in his argument, not only the Judge but also those sitting in the Court would either laugh at him or at least pity him for not being progressive. On the other hand, an advocate can easily impress the Court by taking the names of Lord Caterpillar or Lord Butterfly in support of his proposition and out of fear of being branded as ignorant, one would not even ask as to whether there existed Judges with those names.

John D. Mayne, the author of the most popular treatise on Hindu Law had appeared in vast number of cases pertaining to Hindu Law in the Privy Council and other superior courts. In the introduction to the first edition of his treatise written in 1878, he observed, "I cannot conclude without expressing my painful consciousness of disadvantage under which I have laboured from my ignorance of Sanskrit. This has made me completely dependant on translated works. A real satisfactory treatise on Hindu Law would require its author to be equally learned as a lawyer and an Orientalist…. Hitherto, unfortunately those who have possessed the necessary qualifications have wanted either the inclination or the time. The lawyers have not been Orientalists, and the Orientalists have not been lawyers."

One would have expected the situation to improve after independence. Unfortunately it has deteriorated, so much so, that the law makers, do not have inclination even to look into translations, let alone, the original works. We have turned blind eye to our great treasure and the result is that our laws, particularly Hindu Law as it existed now is the result of the knee-jerk reaction of someone without even showing any inclination to know the background of the concept, which is readily tinkered with. Just as our educational system, which was the most ideal in ancient times has been hijacked and almost defaced by certain vested interests, Hindu Law was also given the roughest if not wildest treatment and was reduced almost to some precepts of convenience. If Hindu Law in its complete form was a perfect vehicle with sophisticated mechanism, what is handed out by the Parliament, after independence, is just four wheels, detached from the vehicle. Which the wheels have nothing to propel or drive them, the Engine, chassis and body remained idle for want of wheels.

If one intends to resurrect the glory of ancient Indian Law, the task is commendable, but very difficult and challenging. Fortunately, for us, there is valuable material available, be it, in Library at Tanjore (Tamil Nadu), or P.B. Kane Library at Pune. Scholars of high order are also available. One has only to put them together and get the work done. However, the challenge in this regard is worth being accepted.

I hope and trust that the outcome of the national seminar on Hindu Law would lead to tangible steps.

◆◆◆

The Frontiers of Hindu Law – Initiating Debates

*Vikramjit Banerjee

After nearly 70 years of independence the question arises where do we see Hindu law proceeding towards. Hindu law, after the codification project in the 1950s, is again at a crossroads. The question now is not so much as to how to make Hindu law progressive but whether by making the law progressive, we are losing the essence of Hindu law.

Progressiveness in Hindu law has always been attached to two subjects, (a) the question of its treatment of women, and (b) the question of treatment of its castes or jatis, traditionally deemed low in the hierarchy. The question of the first has largely been solved by bringing in large-scale changes in to Hindu law through statute. This has resulted in the status of women being made at par with international standards. No doubt that this has resulted in damage to family structures but the allegation that Hindu law discriminates against women does not seem to find as much resonance as it used to find before.

The question as to how to deal with broader questions of inequality which exists as part of Hindu tradition is something which needs to be confronted. It is the view of this author that the future of Hindu law will be written in this new arena of contradiction between the continuous clamour to have equality and the continuous pull of tradition, which have for a long period of time treated groups of people differently based on their birth.

The last question which arises out of this broad discussion is what is the best method through which this equalisation can take place and how to formulate a system which would not lose the essence of Hindu tradition while making it egalitarian in its approach towards all adherents of its faith.

This paper will deal with four broad issues in relation to Hindu law, namely (a) the question of wider consultation while formulating changes to Hindu law, (b) the question of making temples centres of Hindu society while at the same time ensuring that being public places, there is no scope for discrimination in its structure, (c) the question of whether codification is a solution to the continuous problems of Hindu law or whether it is time for us to go beyond mere codification and (d) the question as to whether Hindu law may be de-legalised .

The question of wider consultation while formulating changes to Hindu law.

We have seen time and again that wide scale

*The Writer is an advocate at Supreme Court of India and also Advocate General of Nagaland.

changes have been made to Hindu law without ever consulting Hindus. It has been an article of faith of the honourable Supreme Court that personal laws are not subject to fundamental rights because personal laws are not law for the purposes of Article 13 of the Constitution of India. The catena of cases which continues to the present day through a large number of judgements of the Supreme Court[1] would indicate that it is the view of the Court that personal laws are not subject to fundamental rights enumerated in the Constitution since personal law is not strictly law. At the same time we have seen wide scale changes being brought in Hindu law by legislation by the State without any consultation.

Since the first modern codification of Hindu law was brought about in the early 1950s there has been huge changes which have been initiated within Hindu law. This has resulted in both the enhancement of the status of a woman within the family and has also resulted in changing the focus of a family from a composite unit to a social arrangement of independent individuals. It is a different question altogether whether the said changes have actually benefitted women outside the limited periphery of relatively independent women of a certain section of society.

In Hindu law marriage is a sacrament. The government through legislation has changed the very nature of marriage by allowing extensive changes in the concept of marriage in society. The process through which norms and laws of divorce have been loosened making it easy for people to break out of the norms of marriage has been unparalleled in the last 1000 years. The extensive intervention in the question of succession rights has also resulted in creating and accentuating issues which have resulted in fracturing of the family. The result of this wide ranging intervention has been that the concept of joint family has almost disappeared and has increasingly been replaced by nuclear families in urban areas of India.

However these extensive changes have been initiated without consultation with the wider Hindu society. It seems to have been taken for granted that the logic which was behind the initiation of the first Hindu Code still holds valid today. The state it seems has gone out of its way to ensure that the bearers of tradition, whether it be religious or social are excluded from the process of formulation of such personal laws on the ground that they would be impediments to change, even though such institutions have a wide impact on society. On the other hand the state has gone out of its way to consult non-governmental organisations which are perceived by the state to be progressive. These 'progressive' elements are far removed from Indian reality and have very little impact on formulation of social norms. It is also surprising that this process of using external catalysts completely alien to Hindu society and tradition are only being used for making changes in Hindu law and not for making changes in family and personal law of other religions. In fact it is apparent that the government has reacted to social and religious pressures while dealing with personal

law of other religions. This unilateral approach has resulted in cleavage within the Hindu society whereby the laws which have been framed for society do not reflect the societal reality. This unfortunate creation of laws disconnected from the underlying undercurrents within society has resulted in unintended but grave consequences on those very people whom the laws were supposed to protect. The increasing misuse of criminal law to target other women in the family of a husband by a disaffected wife because they seem to be the most vulnerable arises out of this complete incomprehension of the state of social realities.

No doubt that there are changes which are required in Hindu law and no doubt that such changes are long time coming but such changes cannot be brought in by government fiat alone; there has to be generation of social will for such changes. It is important to remember that whenever wide scale changes in Hindu law have been initiated, the prime movers of such changes have been from within Hindu society, for e.g. Ishwar Chandra Vidyasagar and Baba Saheb Ambedkar. The process of initiation of debate and the dissemination of ideas fundamentally changed people's views of certain laws which were discriminatory. The government, it seems today, is not interested in the debate but is more interested in surreptitiously making changes in Hindu law to the exclusion of other personal laws.

It is important therefore that a process be initiated whereby the government is mandated to consult religious and social groups before bringing in changes into Hindu law in future. The structure so created may be a representative structure or a board or it may be a method whereby different groups may be consulted but it is imperative that such a structure through statutory backing must be created for the future.

The question of making temples centres of Hindu society while at the same time ensuring that being public places, there is no scope for discrimination in its structure.

There are essentially two parts to this question. The first part deals with the question as to how Hindu temples, which have been taken over by the government either because of disputes or because of the public interest, be returned to the people and what sort of governance structure be put in place once these temples have been returned to Hindu society. The second part is how to make worship of an increasingly egalitarian faith equal. Needless to say this is still a huge challenge and remains a key element in creating a society with less hereditary privileges. Considering how contentious the second issue is, it would be perhaps proper that a separate paper be presented on it. However for the purposes of this paper a broad outline is only indicated as to how possibly an attempt to create uniformity may be the first step towards a broader reworking of the entire process.

In relation to the first question, it is important to understand that most of today's big Hindu temples in India are governed by the state. This

has led to a situation whereby Hindu religion has been de-facto nationalised. It does not mean however that Hindu religion has been given a special status under the Constitution but that the major places of worship as well as the wealth generated out of such worship and the disbursal of the same has not remained in the hands of Hindu society but has been transferred into the hands of the government. Prima facie it is obvious that the said arrangement is contrary to strict secularism. It also creates a situation where vis-a-vis other religions Hindus feel discriminated. It is also a matter of continuing incomprehension as to why the wealth of the community which has been given for a religious purpose is used by the state for secular and nonreligious ends. No doubt that the wealth generated may rightly be used for social upliftment but the question is as to whether the Hindu community should have a say both in setting its priorities as well as it's ends. It is also well known that temples have been the centres of Hindu community for thousands of years. The attempt of various different competing colonial regimes have been to destroy or remove from control of Hindus their temples. At the time of foreign colonialism, this thinking may have been a much hated but nonetheless an effective tool of governing the people but it is surprising that in independent India under the governing credo of secularism, such practices continue.

It is suggested that it is time that governments return temples, some of which have been ostensibly taken over temporarily but factually permanently, to the Hindu community. The method of governance of these temples once they are returned needs to be discussed threadbare. There are two broad models which may be taken up for consideration, either a territorial model based upon the state and or at the national level which would be a representative in nature which would govern all the public temples on the lines of the Shiromani Gurudwara Prabandhak Committee or a shrine specific model again which should be representative in nature like the one at Vaishno Devi, Tirupati and Amarnath. However the role of the state, which has been the hallmark of the shrine specific model, should be reduced to a minimum. It is suggested that a statutory framework of the same should be formulated either as a model bill or as a comprehensive one. Needless to say that the composition of the representation should be truly egalitarian and it is suggested that it should also include provisions of affirmative action so that the same may be truly inclusive. Such a step, as making public temples truly inclusive, would be in consonance with Article 25 (2) (b) of the Indian Constitution which mandates that the government throw open Hindu religious institutions of a public character to all classes and sections of Hindus.

The second part is the question of equalisation or the de-priviligesation of worship. While accepting that there is a private nature to faith and religion, it is also important to recognise that increasingly Hindu religion and the exercise of Hindu religion is a public act. It is also important to recognise that public Hindu temples as

distinguished from private Hindu temples are by their very definition should be made accessible to every Hindu. It is important to ensure that there is no scope for discrimination of any sort on grounds of social inequality in any Hindu temple. If needed it is crucial that the said changes be brought about through statute in the exercise of Raj Dharma of the state.

The second aspect of the said right to worship is the right to equalisation of opportunity to being priests at public temples. There is no doubt that all rituals in different temples are highly specialised and that such rituals take a large number of years to perfect. There is also no detracting from the fact that such rituals need to be performed in consonance with age old tradition, custom and norms. However over a period of time, the performance of such rituals and the right to perform them have become hereditary. Just as it would be incorrect to assume that someone merely learned in Sanskrit would be able to perform the rituals exactly, it would also be a mistake to assume that those who are born into a certain family would be able to perform the rituals better than those who are not from the family. It is suggested as a first step that the qualifications of priests in Hindu temples be standardised. This could either be in the form of a degree or in the form of an examination. However to be able to take the position of a priest in any public temple there should be a large period of apprenticeship which would allow a novice to learn and internalise the specific rituals of the temple in which he would conducts worship.

The reforms in priesthood as has been mandated by the Supreme Court is not contrary to Hindu religion and is an important step to ensure egalitarianism within the religion[2].

The question of whether codification is a solution to the continuous problems of Hindu law or whether it is time for us to go beyond mere codification.

The codification of laws is a gift to India by the British. The laws as we know them today whether they be in criminal law or commercial Law or in personal law are a product of westernisation of India's jurisprudence.

There is nothing per se incorrect with codification. Codification produces uniformity and standardisation. Codification also reduces arbitrariness. Therefore, in a modern democracy codification of laws is the cornerstone of constitutionalism. However codification of personal laws has done more harm than good in India.

The reason why codification of personal laws in India is harmful to Indian society was because the process of standardisation of norms which is the basis for codification was done without trying to find out the reality of the validity and applicability of such norms in practice. As is now well known the first formulation of a codified law was done by the British and all subsequent changes including the acts collectively known as the Hindu Code were done in pursuance of a modernist understanding of Indian society. It differed greatly from what was practised on the ground. This resulted in an

anomalous situation whereby instead of incorporating flexibility which is the key to family relationships the law added rigidity. Numerous social customs which was the basis of Hindu law and which gave it flexibility to deal with various different situations arising in society were at a single stroke removed by the Hindu Code. This removed, at a single moment, the tools which would have been available to those adjudging those disputes to come to a fair and equitable conclusion.

The biggest argument towards codification of personal law has been that it has brought in equality in Hindu personal laws. However it is suggested that instead of codification if the personal laws were made subject to the fundamental rights and equality provisions of the Constitution as is clearly made out in Article 25 of the Constitution and the same were implemented strictly, the flexibility of the tradition as well as the imperative of modern equality would have been maintained. The random standardisation of Hindu law without contextualisation has resulted in complete disjunction of reality, tradition, actual practice and textual norms. It is time possibly to look outside the box for comprehensive solutions.

The question as to whether Hindu law may be de-legalised

The other big question which is related to the de-codification of Hindu law is the related idea of de-legalisation and removing the Judiciary from an area which it is ill-equipped to handle, namely family relationships.

Family by nature is a product of society and the unit on which a society is constructed. The insertion of a rights in the family structure has led to more damage than good. The exercise of these rights has been through the courts of law. This in turn has led to the situation where the entire process of living in a family has been legalised. Every aspect of one's living in a family structure has now been made subject to some form of legal regulation. This has on one hand increased legal intervention in the family and on the other hand has also resulted in exacerbating differences between the family members. It has also resulted in providing tools to members of the family to destroy the family as a unit. The ostensible reason for doing this, as made out by progressives, is to set right the inherent imbalance of power which exists within the family. The resultant fallout of such misguided intervention has been that the family structure in the urban areas of India is increasingly collapsing.

In Western countries where there is the provision of social security, the collapse of the family may be set off against the safety net provided by the state. However in India where there is no social security the collapse of the family has a disastrous impact on the weakest members of the family. The process of approaching the court which seems a remedy in the short run, being easily available, turns out to be a mirage in the long run. The Courts are also ill-equipped and completely at a loss on how to handle family relationships which is the keystone of personal laws.

It is therefore suggested that it is also time

that we explore as to whether the dispute resolution mechanism of Hindu personal law be brought out of the courts and given to social dispute resolution mechanisms. The details of what would be adequate and what would keep interests of all stakeholders in mind may have to be formulated after deeper and wider consultation but it is time to see whether alternative dispute resolution mechanisms may be a better method to solve family disputes in Hindu Law. It is also to be specifically noted here that even if such resolution mechanisms are taken out of the purview of the courts the same would be subject to supervision of the courts under article 226 of the Constitution of India and therefore must comply with constitutional norms and fundamental rights. The chance of such dispute resolution mechanisms taking any action which would go contrary to accepted norms of equality would therefore be completely mitigated.

Conclusion

In the end it is important to note that a long time has passed since the Hindu Code has come into effect. We have been able to note its disadvantages as well as its advantages. The disadvantages which we brought upon ourselves in the Hindu Code needs to be remedied by tools which are available to us. On the other hand there is an impending need to make Hindu religion and Hindu law even more inclusive and non-discriminatory. The future lies in the road whereby we would be able to wed the twin ideals of tradition and constitutional obligations in holistic manner. This article is hopefully an initiator of discussion towards that path.

References:

[1] *Riju Prasad Sarma v. State of Assam 2015 (9) SCC 461.*

[2] *N. Adithyan v. Travancore Devaswom Board 2002 (8) SCC 106*

◆◆◆

Religious Freedoms and Reforms[1]

*Kanu Agarwal

The following article discusses the important parameters of State control over Hindu religious and charitable institutions. The first part examines the Constitutional provisions with regard to the Freedom of Religion in India and provides a brief outline of the constitutional jurisprudence surrounding the issue and the major principles emanating from it. The second part analyses the degree and extent of State control of Hindu institutions in the backdrop of development of the doctrine of essentiality. The third part particularly deals with the reformative approach of the State and the Courts. The final part summaries the Constitutional position and makes recommendations for the future.

I. Constitutional Provisions

Article 25 of the Constitution of India ("Constitution")[2] makes the freedom of conscience and the right to profess, practice and propagate religion subject to public order, morality and health and also to the other provisions of Part III of the Constitution. Article 26 of the Constitution[3], confers on every religious denomination, the right to manage their own affairs in matters of religion, and administer properties as per the law. The Constitution, being a verbose document, weaves a complex fabric between religious freedoms and the State's power to regulate them. The playground for the exercise of these freedoms is created between the degree of State regulation and the extent of the fundamental right to religious freedom.

The Constituent Assembly, intentionally and precisely, elevated the freedom of conscience and the freedom of religion to a fundamental right. The expression of these freedoms is not limited to just an inward belief in a set of theological or cultural values, but it extends to the outward expression and the acts done in pursuance of profession, practice and propagation of the beliefs. The Constitution consciously omits to create a wall separating the State and religion, in consonance with the positive brand of secularism established through the constitutional setup.

In terms of the simple legal interpretation of the Articles 25 and 26, it is to be noted that Article 25 is a freedom allocated to each and every citizen of India as well as any person residing within the country. To the contrary, the freedoms for acquisition, establishment, management and administration of religious bodies are enjoyed by the various 'denominations' or groups or communities within religious folds. Therefore, the very nature of the right guaranteed within these Articles differs and a harmonious construction of the two would be necessary.

**The author is an advocate at the Supreme Court of India, New Delhi.*

Further, the denominational right enshrined under Article 26 puts Hindu temples at two different footings constitutionally, one, being institutions of public character and the other being specialized denominational institutions. This differentiation is further accentuated through the language of Article 25(2)(b) wherein *'Hindu religious institutions of a public character'* were characterized under a special proviso. Constitutionally, the obvious language and the nature of 'public' Hindu temples, makes them subject to a much greater degree of State control and intervention. The Supreme Court's approach with regard to denominational right has been inconsistent, wherein the State's attempts at intervening in the functioning of denominational Temples has been held to be constitutional.

Lastly, while freedom of religion is subject to the other provisions of Part III of the Constitution (as per Article 25), the framers consciously omitted the said proviso from Article 26. The nature of freedoms prescribed within the two Articles is different, as Article 25 extends freedom to a person in the capacity of an individual, whereas Article 26 extends freedom to a community/ denomination. For instance, even if the Jain practice of Santhara[4] is held to be essential to the practice of the religion, it might be subject to the fundamental right of life and personal liberty guaranteed under Article 21, whereas the appointment of religious heads as per religious doctrines of a denomination will not be subject to the principles of non-discrimination enshrined under Articles 14, 15 and 16. Unfortunately, the Indian Courts have consistently treated Articles 25 and 26 at par with the provisions of Part III of the Constitution, overlooking the significance of the unequivocal constitutional omission[5].

II. Degree of State Control

A. Essentiality Doctrine

The degree of freedom over religious institutions is couched within the construct of Article 26(b), which provides freedom to every denomination *'to manage its own affairs in the matters of religion'*. The phrase 'in the matters of religion' has been interpreted by the Courts in a restrictive and linear fashion, resulting in the restriction of the freedom to manage the affairs of a religious institution. To determine the extent of the religious freedoms, the Supreme Court has expounded the theory of the essentiality, i.e. limiting the religious freedoms to matters essential to the practice of the religion/ denomination.

The birth of this test has been somewhat wrongly attributed to a speech by Dr. Ambedkar in the Constituent Assembly: *"The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death. There is nothing which is not religion and if personal law is to be saved, I am sure about it that in social matters we will come to a standstill. I do not think it is possible to accept a position of that sort. There is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend beyond beliefs and such rituals as may be connected*

with ceremonials which are essentially religious."[6]

It is to be noted that the above-mentioned excerpt clearly refers to the need to save the secular nature of personal laws and civil rights in the country and does not shed light on the denominational right of religious institutions or the personal affirmative right to free profession of religious practices. Be that as it may, as per the current position of the law, the final arbiter of the division of any activity into religious or secular function would be the Court, wherein it would examine the theological and the cultural basis of such activity within the denomination to ascertain if such function would be essential to the practices of the denomination.

It is to be noted that in some judgments prior to the *Shirur Mutt* case, the nature of definition of 'religious practice' was settled by the tenets of the religion and would not necessarily require a judicial enquiry of the tenets itself. In other jurisdictions, the courts only enquire whether a particular practice is *'sincerely held'* by its adherent, a question that requires them to go into the adherent's past behaviour and conduct, but not into the substantive nature of the practice itself. It is to be noted that while the freedom religion can be subject to regulations in most countries, the Indian approach to religious freedoms differs from most modern democracies. In the exercise of the power to regulate, the Indian Courts sit in judgment over the professed views of the adherents of the religion and to determine whether the practice is warranted by the religion or not, essentially carrying out a function which is ostensibly not their core function[7]. The genesis of the American separation of the Church and the State is derived from the Federalist Papers, wherein Madison said that the Constitution of the United States of America had erected a wall demarcating the *"City of God"* and the *"City of Man"*. This approach estops the American Courts from taking any approach like the essentiality doctrine to matters concerning the free practice of religion and administration of religious institutions.

The applicability of the essentiality principle to the varied denominations not having a public character is aimed at preserving the distinctive and diverse nature of communities within the Hindu fold. A law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under Clause (b) of Article 26[8] and the 'Basic Structure' doctrine[9]. Therefore, the legislature cannot take away the right of a denomination to manage their own affairs in matters of religion, whereas the right to acquire, own and administer property, which are not matters of religion could be regulated by valid laws. The logical outcome of this position is that all functions, which are seen to be outside the purview of *'essential'* religious affairs, are deemed to be secular functions amenable to state control. In contrast, in the United States of America[10] and Australia[11], the freedom of religion was declared in absolute terms, and the courts had to evolve exceptions to that freedom, as opposed to the Indian

Constitution, which specifically enshrines limits in the exercise of freedoms under Articles 25 and 26[12].

The Supreme Court, in the *Shirur Mutt* case, created special conditions for 'denominations' with cogent doctrines of establishment, in line with diversity and the complexity of Hindu institutions. Further, as per Article 26(d), it is the fundamental right of a religious denomination or its adherents to administer their properties in accordance with law; and law, therefore, must leave the right of administration to the religious denomination itself, subject to such restrictions and regulations as it might choose to impose. The Indian Courts ascertain the freedoms exercised by every denomination by a thorough analysis and interpretation of the theology of that particular denomination. This unique and somewhat strange function of the Indian Courts is the central differentiating factor with respect to other jurisdictions. Previously, the Court has also extended the independence of the essential functions to the acts done in pursuance of the said essential functions[13]. For instance, if the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day or that the periodical ceremonies should be performed in a certain way, at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, that would constitute religious practice[14].

C. Reforms and Essentiality

A recurring theme, which enables the State to make law, is the need for social welfare and reform, provided under Article 25(2)(b). The test of essentiality being of judicial origin, also applies to regulate the constitutionality of reform legislations within the religious and cultural sphere. In the Sardar *Syedna case*[15], the Court had held that Article 25(2), which allowed the State to pass reform legislation, *"is intended to save the validity only of those laws which do not invade the basic and essential practices of religion which are guaranteed by the operative portion of Art. 25(1)."* This approach not only rendered an Act enacted for social reform under Article 25(2)(b) unconstitutional but also inhibited reform of the community from within by giving legal sanction to excommunication. Such an approach handicaps the freedom of religion and conscience of a person, at an individual level. To make things worse, the Supreme Court held that mere curtailing of the legal rights of an individual, by excommunication, would not make the Act banning such practice a *'law for social reform'* under Article 25(2)(b). Justice Sinha, in an admirable dissenting judgment in *Sardar Syedna* case, held that practices that directly impacted a person's enjoyment of his civil rights that were guaranteed by law, as the power of excommunication, could not be given constitutional protection. It is to be noted that a writ petition was filed in 1986 for the review of the above case wherein the Supreme Court acknowledged Justice Sinha's dissent and noted that a review may be permissible. The matter was further complicated as the review petition required an order for review by a bench comprising of 7 (seven) judges. The Supreme Court first settled the issue with regards to the review petition

and has subsequently struggled to finally reconsider the matter expeditiously[16]. Recently, the Maharashtra legislature has enacted a law prohibiting social boycotts (which are defined in numerous ways, ranging from expulsion from the community, to obstructing regular business and social relations, to obstructing the performance of marriage) within communities. The draft bill specifically prohibits excommunication, which brings the *Dawoodi Bohra* judgment in contention.

Recently, an issue came up before the Supreme Court in the *Sabrimala* case with regard to the essential religious beliefs, pertaining to the denominational deity in a Temple. It is alleged that the deity is in his celibate phase and the entry of women within the compound during the said period of celibacy would materially impact the essential feature of such denominational temple. The Kerala High Court has previously upheld the said bar of entry of women between the ages of 10 and 50 stating that they did not constitute a "class" or a "section" of Hindus. The protection provided on the ground that women between the ages of 10 and 50 do not constitute a class or section for the purposes of Article 25(2)(b), seems to rather creative, but constitutionally untenable. The Temple texts provide that women between the ages of 10 and 50 have been grouped together by the temple authorities themselves, on the stated ground that they are likely to disturb the "celibacy" of the deity. The freedom of a denominational temple like *Sabrimala* with regard to the management and administration of its property should be at a higher footing, and provide much more legitimacy to the rather special nature of the rules surrounding the Temple. This elevation of religious freedoms over and above the constitutional parameters would come in direct conflict with the observations in the *Adi Saiva* case. Therefore, the question that the Courts need to answer must be, whether the said entry of women contravenes the essential feature of celibacy of the deity to such an extent that it would render it completely irrelevant. Further, the Courts need to understand the complex nature of the Temples in Kerala including the other denominational deities like the *Attukal* Temple and the *Chakkulathukavu* Temple, both of which provide special status of women and differentiate. The Courts further need to elaborate on the expanse of the Hindu fold and the many counter balancing and overlapping forces acting within the religious construct of the society or denominations. Differentiation on such grounds, considering the complexity of the Temples in the region, may not necessarily lead to systematic discrimination as mentioned in the language of Article 25(2)(b).

The anti-discriminatory ethos of Indian Constitution in the backdrop of the *Ambedkar* principles of *'social justice'* prohibited both the State and communities from treating individuals in discriminatory ways, insofar as that discrimination blocks their access to crucial public goods, whether material or symbolic. The provisions of the Constitution specifically provided protection to laws enacted for social reform, to provide the access of religious and civil rights to all classes of citizens, considering that religion plays a central role in public life in India. It has been insightfully noted[17] that

the Supreme Court has constituted "an internal level of reform" by holding that certain regressive practices do not constitute "essential" parts of a religion. This important societal and constitutional function denies certain practices constitutional protection, and also provides the Court with the power to re-characterize religion itself and create new social facts through its holdings. The legislature and the Courts, have felt this need for reform in the Hindu fold, even of the 'essential tenets' or 'sincerely held' beliefs in numerous cases. It may also be argued that there have been certain positive impacts of these measures but the concurrent curtailment of institutional/ denominational Hindu religious freedoms could have been avoided.

III. Conclusion

The legislations with regard to reforms must be adjudged at the same constitutional footing and the State must, in true *Ambedkarian* spirit, endure to eradicate the numerous 'religiously' or 'culturally' sanctioned evils, which limit the exercise of civil rights of the adherents, across all communities, denominations and religions. The imbalance within seemingly secular sectors of State control has been starkly increasing and the ignorance of the State to reform the practices of other faiths is depriving the communities a valuable opportunity for reform and rejuvenation. While the contours of such reforms may represent a stiff challenge to the legislative competence of the State, the lack of political will has been the main impediment in this regard. Therefore, if a sect/ religion or denomination is to be constitutionally tested by the beliefs of that sect/ religion or denomination and not through consistent constitutional principles, the impression of a perceived bias amongst a set of followers is inevitable.

In India, due to the ever-expanding role of the State in the pre 1991 era, the State exerted an immense willingness to meddle in the affairs of Hindu institutions. The slow tinkering and expanding of the term 'regulate' to effectively allow control and administration is reminiscent of the expansive State approach within Indian polity in other spheres. The judicial review of essentially religious practices and the interpretation of religious doctrines have made the Courts, the custodian of religion and religious beliefs. This has also resulted in curtailing the extent of religious freedoms between different religions to different extents, which negatives the very nature of the freedoms guaranteed by Articles 25 and 26.

References:

[1] This paper is presented at the National Seminar on Hindu Jurisprudence jointly organized by Centre for Constitutional and Legal Studies (CCLS) of India Foundation and Indian Council of Philosophical Research on May 16-18, 2016 at India International Centre, New Delhi.

[2] Article 25: Freedom of conscience and free profession, practice and propagation of religion

"(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I: The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion

Explanation II: In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."

[3] Article 26: Freedom to manage religious affairs

"Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law."

[4] The judgment of the Rajasthan High Court in *Nikhil Soni v. Union of India & Ors.,* DBCWP 7414/06, has been stayed and notice has been issued by the Supreme Court in Akhil Bharat Varshiya Digamber Jain Parishad v. Union Of India And Ors., SLP (Civil) CC 15807/2015.

[5] *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, 1954 SCR 1005 ("**Shirur Mutt**"); *E.R.J. Swami v. State of Tamil Nadu*, AIR 1972 SC 1586; *Seshammal and Ors. Etc. Etc. v. State of Tamil Nadu*, (1972) 2 SCC 11 ("**Seshammal**"); *Adi Saiva Sivachariyargal Nala Sangam and Ors. v. The Government of Tamil Nadu and Ors.*, (2016) 2 SCC 725 ("**Adi Saiva**").

[6] Speech by Dr. B.R. Ambedkar on 2nd December 1948. Accessed from : http://164.100.47.132/LssNew/constituent/vol7p18.html

[7] *Jesse Cantwell v. State of Connecticut*, 84 L Ed 1213 : 310 US 296 (1939); and *United States v. Ballard*, 88 L Ed 1148 : 322 US 78 (1943).

[8] Shirur Mutt *supra*.

[9] See His Holiness Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr., (1973) 4 SCC 225

[10] See the First Amendment to the Constitution of the United State of America.

[11] See Section 166 of the Australian Constitution.

[12] *Nambudripad v. State of Madras*, (1955) Mad. 356

[13] Shirur Mutt *supra*

[14] *Ibid*

[15] *Sardar Syedna Taher Saifuddin Saheb v. Bombay*, (1962) Supp. 2 S.C.R. 496

[16] Writ Petition (Civil) 740 / 1986

[17] See Gary Jeffrey Jacobsohn, *The Wheel of Law: India's Secularism in Comparative Constitutional Context*, Princeton University Press (2005).

◆◆◆

A Critical Appraisal of Hindu Law[1]

*Saema Jamil

The history of Hindu Law reforms spans a period of fifteen years (1941 to 1956). A Hindu Law Committee was set up in 1941. It recommended the enactment of one comprehensive code that would cover all matters relating to marriage and succession. The recommendations led to the formation of the second Law Committee in 1944 which submitted its report in 1947 to the Federal Parliament[2]. There were fiery debates in the Parliament over the recommendations for almost a decade before four separate Acts could be passed in 1955-56[3].

The enactment of the Acts was hailed as a major leap towards the liberation of women. However, the story behind the codification of Hindu Law is not that simple. Politics and appeasement of the conservatives played a major role in the enactment of the four Acts and the goal of liberating women and attaining gender equality took a back seat. The foremost concern of the Hindu reforms was to amalgamate the diverse Hindu society and to bring uniformity in the law for the purpose of unification of the nation[4].

Thus, even though the Hindu personal reforms were portrayed to be radical, the provisions did not do complete justice to women. The final Acts that were passed were so different from the original provisions that were mooted that it can almost be said that the government had given up on the idea of a Hindu Code.[5] Despite this, it cannot be denied that the Hindu personal law reforms had a definite positive impact on women's rights. It might not have been a leap but it was definitely a step towards achieving gender equality. And we have been taking steps in the same direction ever since. It is necessary to critically analyse the provisions of the Hindu Code to ensure that we do not waiver or get lost on the road to gender equality and finish successfully the journey that we have begun.

This article would discuss the provisions of three of the Acts of the Hindu Code: The Hindu Succession Act, The Hindu Marriage Act and The Hindu Minority and Guardianship Act.

I. Hindu Succession Act

Hindu Law recognises a Hindu Joint Family as a separate entity. Before Hindu Succession Act, 1956, the joint family property was owned in the name of male coparceners[6] and on the death of one of the coparceners the property devolved to the remaining coparceners in accordance with the doctrine of survivorship. The females had no right over the joint family property except the right to claim maintenance.

The Hindu Succession Act, 1956 brought in two major changes: it conferred full ownership of property on Hindu women who prior to the Act had only a *"limited estate"* and it diluted the

*The author is an Assistant Professor at Lloyd Law College, Greater Noida.

doctrine of survivorship[9] by introducing the concept of *"notional partition"*. The former change has improved the condition of women considerably. The courts have interpreted the Section liberally giving benefit to women. Recently in *Jupudy Pardha Sarathy v. Pentapati Rama Krishna & Ors*,[7] the Supreme Court held that a limited interest created in whatever form, in favour of a widow who was having a pre-existing right of maintenance becomes an absolute right by the operation of Section 14(1) of the Hindu Succession Act. This was a case where the husband of the widow had bequeathed a limited interest in some property to her. The court held that the interest was given to her in lieu of maintenance since the husband was aware that she had no means to maintain herself and therefore, Section 14 (1) would apply and she had become the full owner of the property after the 1956 Act was enacted. They gave a narrow meaning to Section 14 (2) to ensure that the woman gets the benefit of Section 14 (1) and upheld the spirit of the provision.

The second change introduced did not introduce gender parity though it did allow women more rights than they previously had. According to the concept of notional partition, on the death of a coparcener, his undivided share was deemed to be his separate property which devolved in accordance with inheritance laws. The rationale was to ensure that the daughters are not left with nothing. The position was still obviously inequitable as the daughter's share was always considerably less than the male's share[8].

This discrimination was sought to be ended by the 2005 Amendment Act which made daughters coparceners and abolished the doctrine of survivorship. The amendment has made the law more equitable but has led to absurd situations. For example, a daughter who was married already before the date of commencement of the 2005 Amendment Act would not be a member of her father's joint family but by virtue of the amendment would become a member of the coparcenary which is a narrower institution than a joint family.[10] Similarly, a daughter who gets married after the 2005 Amendment Act comes into force would be a member of two joint families (one of her father and the other of her husband) and her daughter would be a member of three joint families (her father's, her maternal grandfather's and her husband's)[11] and two coparcenaries[12]. This is a result of a fixation with the concept of Hindu Joint Family. It needs to be understood that the concept of Hindu Joint Family in its strict form cannot continue in the present times.

The entire Hindu family system has been unfair to women. It is the female who ceases to be a member of her father's joint family and becomes a member of her husband's joint family on marriage. Her identity (including her name) changes when she gets married. It is as if she is transferred from one family to another (usually for a consideration, i.e. dowry). But it is also necessary to acknowledge that society is dynamic and is responding to the problem of gender discrimination in the family with change. For example, many parents are not using surnames for their children and women have started retaining their own surnames or using both surnames (hers and her husband's). This dynamism needs to continue and law and society needs to work in tandem.

Another problematic feature of the Act is the presence of separate provisions for succession in case of Hindu men and Hindu women dying intestate[13]. The property of Hindu males devolves upon his heirs irrespective of the source of the income but the property of Hindu females devolves according to the source of the income. This provision dilutes the effect of revolutionary provisions like Section 14 and makes it seem as if the woman is a temporary occupier of the property and that the property must be reverted back from where it was inherited[14] and that the woman has no identity of her own[15].

It is thus clear, that the 2005 Amendment Act has not introduced true gender parity; nevertheless it cannot be denied that it was definitely a step in the direction of reducing the existing inequalities in society. The need of the hour is to recognise the biased nature of the law and to challenge it since lack of challenge and questioning puts a stop to dialogue and more importantly to change. Thus, while recognising and appreciating the positive impact of the 2005 Amendment Act, it is necessary to understand how it still does not guarantee equality between the two sexes.

II. The Hindu Minority and Guardianship Act, 1956

Section 6 of the Hindu Minority and Guardianship Act, 1956 clearly states that the father is the natural guardian of a Hindu minor when the minor is a boy or an unmarried girl and the mother would be the natural guardian **after** the father. It relegates the mother to a lower position than the father. The Section flagrantly denies gender equality and is ultra vires the Indian Constitution by virtue of Articles 14 and 15. And yet, the provision has been declared constitutional by the Supreme Court of India[16].

The Court read Section 6 along with Section 4 (c)[17] of the Hindu Minority and Guardianship Act and came to the conclusion that both parents have been recognised as the natural guardian of the minor. They further stated that the word *"after"* in Section 6 (a) of the Act does not disqualify the mother from acting as the guardian of the minor during the lifetime of the father. It interpreted the word *"after"* to mean *"in the absence of"* the father. The absence could be temporary or permanent and could be a result of total apathy of the father towards the child or any ailment of the father. According to the court, this interpretation would be in consonance with the intent of the legislature which was to make provisions keeping in mind the welfare of the minor and would help the provision to stand the test of constitutionality. The interpretation was in no way ingenious because the provision had already been read down around two decades before this judgment was pronounced[18].

The Apex Court in *Githa Hariharan* case did not explicate how reading down Section 6 (a) of the Act made it constitutional. Even if the word *"after"* in the Section implies *"in the absence of"*, the Section stills violates the woman's right to equality. The mother is recognised as the natural guardian of the minor only when the father, for whatever reasons, is not in a position to look after the welfare of the minor. The interpretation denies the woman equal rights as her partner. The law as

well as the court assumes that the father is either more capable or better equipped to cater to the needs and welfare of the minor than the mother. Lamentably, the court while giving a decision against gender equality completely denied it was doing so. It violated the right to equality employing the language of equality.

The right thing to do would have been to declare the Section unconstitutional as it violated the fundamental right to equality. Instead the court after paying lip service to the constitutional mandate of ensuring gender equality held the Section constitutional giving specious reasons. This was worse than saying that the court would not interfere in personal laws because if it would have said so, it would have at least recognised that the Section was violative of the right to equality. However, by declaring that the Section is constitutional, if read down, the court did not even acknowledge the biased nature of the Section.

Also, Section 6 (a) of the Act reveals the influence of prescriptive gender behaviour and roles on the legislature. It makes the father the natural guardian of the minor in normal circumstances but stipulates that the custody of the minor till the age of five would ordinarily be with the mother. This is in line with the assumption that it is the duty of the mother to take care of the minor in his/her early years because she is better suited to the job while the father is entitled to manage the minor's person and property and be the natural guardian[19].

The entire scheme of Section 6 of the Hindu Minority and Guardianship Act, 1956 is problematic because it tends to validate the hypothesis that men and women are inherently different and therefore better suited for different roles.

Another point to note is that Section 7 of the Hindu Minority and Guardianship Act says that the natural guardian of an adopted son is the adoptive father and after him the adoptive mother. There is no corresponding Section saying the same thing about an adoptive daughter (possibly because Hindu Adoption and Minority Act was enacted after Hindu Minority and Guardianship Act and therefore at the time of enactment of the former Act daughters could not be adopted). But even without an express Section, the natural guardian of an adopted daughter is the adoptive father and after him the adoptive mother by virtue of Section 6 of the Hindu Minority and Guardianship Act read with Section 12 of the Hindu Adoption and Maintenance Act. Nevertheless just to bring in parity, it would be desirable if there is an explicit provision inserted to make it express.

III. The Hindu Marriage Act, 1955

The Hindu Marriage Act, 1955 was indeed a progressive Act if we keep in mind the year of its enactment. It gives almost equal rights to the wife and the husband. The wife can file an application for restitution of conjugal rights and the husband can ask for maintenance from the wife in appropriate cases. However, this Act is a perfect example of how an equal law on paper can be applied in a discriminative manner in practice. For instance, what amounts to cruelty in the case of husbands and wives respectively differs according to the expected roles they are supposed to carry out in society. This conundrum of applying the same

law differently can be rectified only by bringing about a change in the way people think and not by changing the law and it has to be conceded that the change is happening gradually.

There is one provision in the Hindu Marriage Act also which is blatantly discriminatory against women. The provision being referred to is Section 25 (3) of the Act which deals with permanent alimony and maintenance. It reads, *"If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just."* Thus, for the wife unchastity is the criterion for modifying or rescinding the order in her favour while for the husband it is sexual intercourse.

The term "chaste" is difficult to define and can be interpreted differently by different people according to their moral and ethical standards. Sexual intercourse, on the other hand, is something that positively needs to be shown and is difficult to prove. The Section admittedly prescribes different standards for men and women when it comes to a decision with respect to when an order for maintenance can be modified or rescinded. For instance, if a woman is out with a man at midnight, it might amount to being unchaste and the maintenance order might be modified but the situation is different in a man's case.

Thus, the Hindu Marriage Act, despite being one of the most equal laws, still continues to hold on to archaic notions of chastity and purity of women and making their rights dependent on them.

Conclusion

Hindu law relating to family has evolved over the years and has become a lot more egalitarian than it was in the past and the attempt of this article was definitely not to overlook positive amendments in the law or progressive decisions given by the courts. The aim was to throw light on the things that still need change and that need to be relooked at from the perspective of gender equality, to argue that we cannot sit satisfied with what has been done and to iterate that we need to look forward and recognise what is still unfinished.

References:

[1] This paper is presented at the National Seminar on Hindu Jurisprudence jointly organized by Centre for Constitutional and Legal Studies (CCLS), of India Foundation and Indian Council of Philosophical Research on May 16-18, 2016 at India International Centre, New Delhi.

[2] The matter was debated in the Provisional Parliament between 1948 and 1951 and in the first Parliament of the newly independent India from 1952 to 1955.

[3] Flavia Agnes, Women and Law in India 78 (3d ed. 2006).

[4] See generally Archana Parashar, Women and Family Law Reform in India: Uniform Civil Code and Gender Equality 103 (1992); Flavia Agnes, Family Law, Volume 1, Family Laws and Constitutional Claims 20 (2011); Madhu Kishwar, Codified Hindu Law:

Myth and Reality 2151 Vol. 29 No. 33 Economic and Political Weekly, August 13, 1994.

[5]Hukum Singh stated in a Parliamentary debate, "It is not the public opinion that has changed but...the government that has changed its attitude...This is not the original bill...The Hindu code has practically been given up by this government." See Parliamentary Debates, House of the People, 7253-54 Vol V, 1954, Part II.

[6]In Hindu Law, within the Hindu Joint Family there is a smaller unit of persons known as the coparcenary which comprises of the senior most male member and his lineal male descendents up to three immediate generations. The concept of coparcenary is based on the son's birth right in the joint family property.

[7] Civil Appeal Number 375 of 2007

[8] For example in a Hindu Joint Family consisting of a father and his two children (a son and a daughter), if the father dies there would be notional partition in which the son would get half the joint family property. The father's half would then devolve to the son and the daughter equally. Thus, while the son would get three-fourth of the property, the daughter would only get one-fourth. See Poonam Pradhan Saxena, Succession Laws and Gender Justice in 286 Redefining Family Law in India: Essays in Honour of B. Sivaramayya (Archana Parashar & Amita Dhanda Eds. 2008).

[9]See Section 6 of Hindu Succession Act, 1955 after the Hindu Succession (Amendment) Act 2005.

[10]Poonam Pradhan Saxena, Supra Note 7 at 288

[11]Id. At 288

[12] This confusion could have been easily done away with by making a provision which provided that the marriage of a daughter would result in a partition with respect to her and she would receive her share in the coparcenary property.

[13]Sections 8 to 13 of the Hindu Succession Act, 1956 give the rules for devolution of property of Hindu males dying intestate while Sections 15 and 16 provide rules for devolution of property of Hindu females dying intestate.

[14]Supra Note 7, pp. 289. The doctrine of reversion has been done away with by the introduction of Section 14 in the Hindu Marriage Act but the essence of the doctrine has been retained by providing separate rules for devolution of property of Hindu females when it is inherited from her parents or husband or in-laws.

[15] This is also clear from the fact that before marriage a woman is referred to as d/o and after marriage she is referred to as w/o. She is never recognised as an autonomous individual.

[16]See Ms. Githa Hariharan and Anr. v. Reserve Bank of India and Anr. (1999) 2 SCC 228.

[17]Section 4 (c) of the Hindu Minority and Guardianship Act defines the term "natural guardian" as meaning any of the guardians mentioned in Section 6 of the same Act.

[18] In Jijabai Vithalrao Gajre v. Pathankhan & Ors 1971 SCR (2) 1, the court held that when the father was not taking any interest in the affairs of the minor daughter and only the mother was looking after the minor daughter's interest and managing her property, it would be proper to consider the mother as the natural guardian of the minor daughter.

[19]The mother is seen as a better care taker because she is expected to be more loving and caring while the father is presumed to make more rational and reasonable decisions for the welfare of the minor. The reasoning is similar to the arguments made by cultural feminists.

◆◆◆

Af-Pak Relations after Mansour

*Alok Bansal

The killing of Mullah Mansour, the leader of Taliban on 22nd May, near AmadWal inside Pakistan's Balochistan province has had a significant impact on the security situation of the region. It has also worsened the already tenuous relations between Pakistan and the US. This, the first drone attack inside Balochistan, saw Pakistan vociferously protesting against infringement of its sovereignty, as this has expanded the area of 'unilateral' US operations within Pakistan. However, as in the case of Osama Bin Laden earlier, Pakistan has yet to come out with any rational explanation for the presence of such elements within its territory. More significantly, this operation has severely strained Afghanistan-Pakistan relations.

The presence of Mullah Mansour inside Pakistan has given credence to what Afghan authorities had always believed that Mansour was in close league with Pakistani authorities. The fact that he had a valid Pakistani passport with visas from Iran indicates that somebody from within the establishment was supporting him. It has also been established that he had travelled to Iran and was coming back. The fact that the leader of one of the most dreaded militant organisation and Amir-ul-Mumineen for jihad being waged by Al Qaeda, was travelling without any protection shows that he never visualised any threat within Pakistan. He took a taxi from the Iran border and travelled over 450 Km in Balochistan where there are numerous security check points on roads to prevent movement of Baloch nationalists, thereby indicating that he feared no threat from security forces.

This affirmation of close links with the establishment in Pakistan coming immediately after heightened Taliban offensive under Mansour, which included attack on Kunduz and other towns, where numerous lives have been lost to Taliban, naturally annoyed Afghanistan. They felt that Pakistan's government was playing a double role by supporting Taliban, while overtly being a part of the Quadrilateral Coordination Group (QCG) on Afghan peace and reconciliation process, made up of representatives from Afghanistan, Pakistan, China and the United States.

Unlike the previous occasion, when Mullah Omar had died, the Taliban did not waste time and contrary to expectations, named Haibatullah Akhundzadaas the new leader. It was widely believed that either Sirajuddin Haqqani, the leader of Haqqani Network, who has been close to the Pakistani establishment or Mullah Yakoub, the son of the Taliban founder Mullah Omar, would be appointed as the leader, as they were the deputies

*Captain Alok Bansal is Director, India Foundation and Adjunct Professor of NDIM.

to Mansour. Both have been retained as deputies to Akhundzada, as they wield considerable influence within the Taliban. Unlike the previous occasion even Al Qaeda came out quickly in support of Akhundzada. To cement his position and ostensibly to avenge Mansour's killing, the Taliban carried out some bold attacks in Afghanistan. Merely hours after the new leader was announced, a suicide attack in Kabul on a bus carrying employees of the judiciary department claimed 11 lives and injured 10 others. As many of them were carried by Haqqani network, fingers were pointed towards Pakistan.

The new leader has vowed to continue the fight and accordingly, the Taliban have refused to participate in any talks. However, the Afghans have been pressing Pakistan to bring the Taliban to the negotiating table, as they had promised to do so earlier. The fact that Pakistan has not done so, has aggravated the rift between the two countries and Afghans have started accusing Pakistan of meddling in their affairs by pointing towards Mansour's presence on Pak territory. More significantly, just before Mansour's killing, the Afghan government had warned it would take action against Taliban for not coming to the table and had urged the QCG to show their military role.

Pakistan, unfortunately, did not come out with any rationale for the presence of the Taliban chief on its territory; rather, it tried to deflect attention by talking about repatriating 2.5 million Afghan refugees, which it claims have been living in Pakistan for decades. It stated that the unbridled movement of Afghans into Pakistan had led to instability and needed to be controlled.To further aggravate the situation, it started implementing a new border mechanism from 01 June, whereby it proclaimed that no Afghan would be permitted to cross the border without a valid passport and Visa, thereby creating serious hurdles for families living across the border. It also started fencing its border and building a gate at Torkham in Khyber Agency, the busiest border crossing, which was objected to by Afghanistan stating that Pakistan could not build a gate anywhere on the border, without its consent. Pakistan however, continued to build the gate stating that it was technically 37 metres inside its border and that it was essential for its counterterrorism strategy to check infiltration of militants and terrorists. The tensions resulted in firing between the forces of two countries, led to the killing of an Afghan soldier and two soldiers of Pakistan Army including a Major, besides causing injuries to many. The funerals of soldiers who died in combat were attended by thousands of mourners in both the countries, clearly indicating the hostile sentiments against each other.

The Afghan Foreign Ministry spokesperson claimed that the security forces had acted to safeguard its territorial integrity and "armed forces are always ready to defend their country and people and to react against any kind of threats". Simultaneously, a senior Pakistani military official stated that the gate at Torkham would "now be built and at any cost" and the army would retaliate with full force, if anyone tried to create any hindrance. This belligerent stance led to continuation of firing between the two sides for

few more days till ceasefire was eventually declared, but tension continued to prevail and troops remain deployed on both sides of the border. All activities at Torkham were suspended and thousands of vehicles and persons were stranded on both sides. Both sides have summoned each other's envoy and have lodged protests, but neither is willing to dilute its stance. To diffuse the issue, Sartaj Aziz, the advisor on foreign affairs to the Prime Minister of Pakistan rang up Afghan National Security Adviser (NSA) Hanif Atmar and invited him and the Afghan Foreign Minister Salahuddin Rabbani for talks to resolve the prevailing logjam. In a direct snub to Pakistan, Afghanistan refused to send either its NSA or the foreign minister, but sent a delegation led by its deputy Foreign Minister Hekmat Khalil Karzai.

The talks failed to reach any conclusion, as Pakistan informed the Afghan delegation that Pakistan planned to build four gates at different places along the border, as it considers them to be crucial to the security of both the countries. The Afghan side claimed that the talks were held in an "amicable and friendly atmosphere" but they had raised the issue of "various violations" by Pakistan, which included setting up of posts in Afghan territory and "unprovoked artillery shelling of Afghan villages." The presidents of the two countries are expected to meet during Shanghai Cooperation Organisation (SCO) meeting.

These developments however, indicate a serious falling out between the two governments, where Afghanistan accuses Pakistan of supporting Taliban and Pakistan accusing Afghanistan of sheltering anti-Pakistan militants. It clearly indicates that having successfully inducted Haqqani network into the top echelons of Taliban, Pakistan clearly sees it as its proxy, which should be allowed to control the levers of power in Kabul. President Ghani, on the other hand after, after placating Pakistan for long, has eventually realised that Islamabad and more significantly, Rawalpindi, are unwilling to stop their support to Taliban. Consequently, Ghani has been scathing in his comments on Pakistan and is making all out diplomatic efforts to isolate Pakistan. His trip to Chabahar was probably a step in that direction. Even the US, after the killing of Mansour had warned Pakistan against terrorist activities in Afghanistan. Pakistan on the other hand, having secured Chinese support, seems to be in no mood to tow the US line. Afghanistan-Pakistan relations therefore are headed for a prolonged period of turbulence.

◆◆◆

Two Years of NDA Government: Broadening vistas of progress and governance

*Jayraj Pandya

"The dream of India as a great nation, which we had seen during the Freedom Struggle, continues to inspire us even today. To some extent, this dream has been realized. Yet, a lot more remains to be accomplished."[1]

- Bharat Ratna Shri Atal Bihari Vajpayee in his last independence day address on 15th August 2003

In the backdrop of these words and after a passage of ten years, the Bharatiya Janata Party (BJP) led National Democratic Alliance (NDA) won a resounding mandate in the General Elections 2014. The BJP achieved a landslide victory by securing 282[2] seats out of the total 543 seats and in the process, became the first party to win a complete majority in the Lok Sabha after a span of 30 years. The new dispensation at the Centre faced colossal challenges such as an economy in doldrums, restive demographic dividend, foreign policy in tatters and much more. It required a Herculean effort on the part of Prime Minister Narendra Modi led NDA government to bring India out of its troubles, most of which being self-inflicted due to policy paralysis and lack of effective governance. This has put the country back on the trajectory of high growth and prosperity.

The effort of this paper is to constructively analyse the progress achieved during the first two years of the NDA Government.

Changing Perceptions, Bursting Myths

Rather than going through the mundane SWOT (Strengths, Weaknesses, Opportunities and Threats) approach in analysing the performance of the Prime Minister Modi-led government, the approach used here is to perform an appraisal on the metrics of *ability to positively change perceptions* and *bursting conventional and age-old myths.*

The biggest positive development which has been witnessed under the new regime has been the significant rise in diplomatic capital of the country. Even there, most of this capital has been equity capital and not debt capital i.e. efforts have been made to foster long-term relations with foreign nations and in making them partners in our growth story. Right from the start of this Government's term by extending invitations to heads of SAARC nations, to operationalising the landmark India-Bangladesh Land-Boundary agreement (LBA) and from rekindling the Indian diaspora with the nation to display of the statesmanlike approach by the Prime Minister in dealing with global leaders and multilateral institutions for best interests of the nation, the country has witnessed an unprecedented global spotlight during the past 24 months of this regime.

On the economic front, the country was

*The author is a Research Fellow at India Foundation

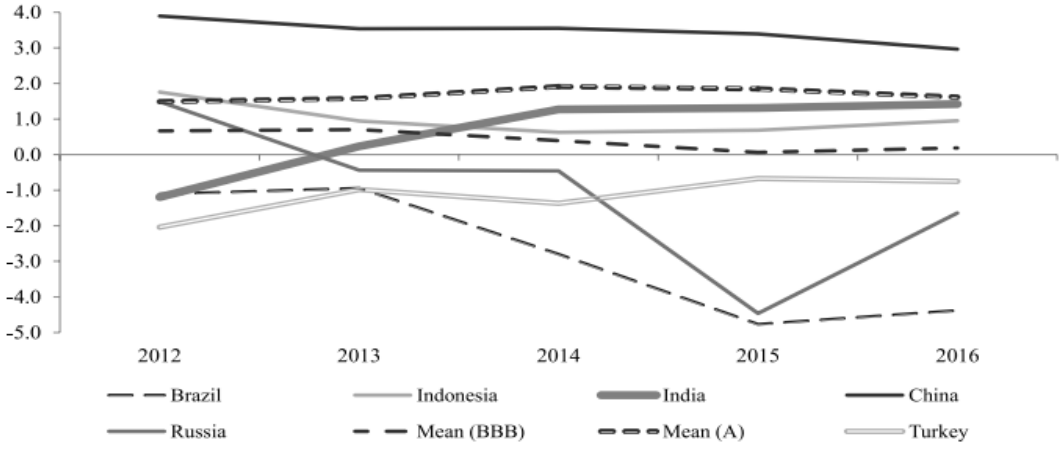
battling a baffling quadrangular conundrum comprising of severe policy paralysis, high inflation, the Twin Balance Sheet (TBS) challenge and low and jobless economic growth. Blatant corrupt practices at a mammoth scale, a hallmark of the previous dispensation, led to self-induced policy paralysis stalling big-ticket investment projects in key sectors such as energy, infrastructure and transportation. Under the *Pragati (Pro-Active Governance and Timely Implementation)* initiative whereby the Prime Minister directly reviews stalled projects- 108 of the 350 Centre-state projects, worth over Rs 3 lakh crore across critical infrastructure sectors like railways, national highways, power and civil aviation, interminably delayed for the past four to 15 years, have been revived.[3] The ardent push to electrify each and every village in the country, doubling the speed of creation of highways in the country and several other such silent revolutions marked the resurgence of infrastructure creation in the country.

Despite two consecutive years of drought, the earnest and consistent efforts made by the Government including creating Price Stabilisation Fund (PSF) for preventing volatility in agricultural commodities, restricting imports of pulses, enabling strict action against black marketers[4] and timely imposition of stock-holding limits of essential commodities[8] has ensured that the days of double-digit Consumer Price Inflation (CPI) are behind us.

Perhaps the biggest perception changer can be seen in the Rational Investor Ratings Index (RIRI), a tool created in Economic Survey 2014-15 to gauge the investor confidence. As can be seen, India performs well not only in terms of the change of the index but also in terms of the level, which compares favourably to its peers in the BBB investment grade and even its "betters" in the A grade. (India is in the BBB investment category according to Fitch rating agency. A is the category just above it.)[5]

Expanding the limits for Foreign Direct Investment (FDI) in key areas including insurance and defence sectors, improving ease of doing

Figure 3. Rational Investor Ratings Index, 2012-16



Source: **IMF WEO, October 2015 and January 2016 update.**

business in the country, passing key legislations for financial reforms such as the Insolvency and Bankruptcy Law, initiation of Indradhanush program for revival of Public Sector Banks (PSBs)[6] and a host of other such progressive measures led to India becoming the fastest growing large economy in the world during the year 2015-16[7] and also the top destination for FDI across the world in 2016[8].

The biggest myth prevailing in the country- *the economically and socially backward classes can only be uplifted through doles and freebies* has been debunked with various affirmative actions taken by this Government leading to empowerment of citizens across the board. The cause of social advancement has been championed by the NDA Government through its flagship programs including providing a bank account in each household (Jan-Dhan , more than 22 crore bank accounts opened[9]), providing life and accident insurance to citizens (Jan Suraksha, 12 crore beneficiaries reached[10]), crop insurance program (Pradhan Mantri Fasal Bima Yojana), providing incentives for economic upliftment through skill training (Skill India), disbursement of loans to small and micro entrepreneurs (MUDRA, over Rs. 1 lac crore disbursed to over 2.7 crore account holders[11]) and through creating a conducive culture for start-ups in the country (Start-up India, Stand-up India).

The arduous push to the Direct Benefit Transfer (DBT) program through development of ***Jan-Dhan, Aadhaar, and Mobile (JAM) Trinity*** has been a major development in institutionalising a change in framework for provision of subsidies and services to the citizens. The first variety of JAM- **PAHAL scheme** of transferring LPG subsidies via DBT has been a tremendous success under this regime. As the Economic Survey stated- *Based on prices and subsidy levels in 2014-15, the potential annual fiscal savings of Pahal will be Rs. 12,700 crore in a subsequent Financial Year.*[12]

Merely looking at the performance of this Government from the prism of tangible achievements would be a misnomer. The tough stance of the Prime Minister over the conduct of his Council as well as the bureaucracy has ensured that corruption, which became a hallmark of the previous dispensation, is done away with, in his tenure. This dispensation has championed several initiatives with an aim to bring about a change in the very mindsets of the citizens such as Swachh Bharat Mission, improving accessibility for Divyang citizens (Accessible India), digital storage of important documents of citizens (DigiLocker), creating an open platform for connecting with citizens (mygov.in), real-time outreach on social media for grievance redressal and more. This Government has also tried to break conventional mindsets ingrained in the bureaucratic system in the country through far-reaching measures such as real-time tracking of attendance of government officers (attendance.gov.in), direct access to citizens to seek appointments (myvisit.gov.in), allowing self-attestation of documents to prevent harassment of citizens and repealing of over 1100 archaic laws in the country[13].

The Way Ahead

In the last two years, the NDA Government has been taking giant strides on the path of equitable social, economic and cultural progress but still a

lot more remains to be achieved. Just like Bharat Ratna Shri Vajpayee, Prime Minister Modi, in his speech on the completion of 2 years of the Government reiterated his commitment towards the nation by saying-

"Work done by our Government in last 2 years is now an inspiration for us to serve the country even better."[14]

References:

[1]*Prime Minister Shri Atal Bihari Vajpayee's Independence Day Address, Former Prime Ministers of India- Prime Minister's Office, 15th August 2003, New Delhi*

Can be accessed at- http://archivepmo.nic.in/abv/speech-details.php?nodeid=9239; last accessed at: 20th June 2016

[2]*Performance of National parties in General Elections 2014, Election Commission of India, New Delhi, 2014*

Can be accessed at- http://eci.nic.in/eci_main/archiveofge2014/20%20-%20Performance%20of%20National%20Parties.pdf; last accessed at: 20th June 2016

[3]*Off the blocks: PM Narendra Modi's big push to get stalled Centre-state projects off the ground, India Today, June 9, 2016*

Can be accessed at: http://indiatoday.intoday.in/story/narendra-modi-project-pragati/1/687740.html; last accessed at: 20th June 2016

[4]*Inflation: LOK SABHA UNSTARRED QUESTION NO. 2448 TO BE ANSWERED ON MARCH 11, 2016; Lok Sabha: Parliament of India, 11th March 2016*

Can be accessed at- http://164.100.47.190/loksabhaquestions/annex/7/AU2448.pdf; last accessed at: 20th June 2016

[5]*Economic Outlook, Prospects, and Policy Challenges, Economic Survey of India- Pg. 9, February 2016*

Can be accessed at- http://indiabudget.nic.in/es2015-16/echapvol1-01.pdf; last accessed at: 20th June 2016

[6]*Indradhanush: Plan for Revamp of Public Sector Banks; Ministry of Finance, August 14, 2015*

Can be accessed at: http://financialservices.gov.in/PressnoteIndardhanush.pdf; last accessed at: 20th June 2016

[7]*GDP: At 7.6%, India's growth points to fastest growing large economy, Indian Express, 1st June 2016*

Can be accessed at: http://indianexpress.com/article/business/economy/gdp-7-9-percent-its-official-india-is-now-the-fastest-growing-economy-in-the-world/; last accessed at: 20th June 2016

[8]*The fDi Report 2016: Global Greenfield investment trends, Financial Times, 2016*

Can be accessed at: http://forms.fdiintelligence.com/report2016/files/The_fDi_Report_2016.pdf; last accessed at: 20th June 2016

[9]*Progress Report: Pradhan Mantri Jan Dhan Yojana, Ministry of Finance, As on 15th June 2016*

Can be accessed at: http://www.pmjdy.gov.in/account; last accessed at: 20th June 2016

[10]*Daily Enrolment for Pradhan Mantri Jan Suraksha Yojana, Ministry of Finance, As on 18th June 2016*

Can be accessed at: http://www.jansuraksha.gov.in/claims-reported.aspx; last accessed at: 20th June 2016

[11] *MUDRA Loans: LOK SABHA UNSTARRED QUESTION No. 1584 TO BE ANSWERED ON THE 4th March, 2016, Lok Sabha: Parliament of India, 4th March 2016*

Can be accessed at: http://164.100.47.190/loksabhaquestions/annex/7/AU1584.pdf; last accessed at: 20th June 2016

[12]*Spreading JAM across India's economy; Economic Survey of India- Pg. 57, February 2016*

Can be accessed at: http://indiabudget.nic.in/es2015-16/echapvol1-03.pdf; last accessed at: 20th June 2016

[13]*Mohan Vishwa, 1159 obsolete laws scrapped by Modi govt; 1,301 junked in previous 64 years, Times of India, 19th May 2016*

Can be accessed at: http://timesofindia.indiatimes.com/india/1159-obsolete-laws-scrapped-by-Modi-govt-1301-junked-in-previous-64-years/articleshow/52333875.cms; last accessed at: 20th June 2016

[14]*Text of PM's address at "Ek Nayi Subah" Event on the completion of 2 Years of the Government; narendramodi.in, 28th May 2016*

Can be accessed at: http://www.narendramodi.in/text-of-pm-s-address-at-ek-nayi-subah-event-on-the-completion-of-2-years-of-the-government-483802, last accessed at: 20th June 2016

◆◆◆

MUDRA Bank: A Boon of Swarojgar

*Priyang Pandey

MUDRA Bank or Micro Units Development and Refinance Agency Bank is a regulator and a one stop solution for developing and refinancing the micro-finance institutions (MFIs) and to implement 'credit guarantee scheme' for micro enterprises in India which according to NSSO survey of 2013 comprises of over 5.77 crores business units.

Modi government announced MUDRA in the 2015-2016 Budget for refinancing micro & small-scale industries that is expected to give a big push to MSME sector, which contributes about 90% of the non-farming jobs in India. Mudra bank was officially launched by the Prime Minister on 8th April, 2015.

Micro and Small Scale Industry in India

A micro enterprise is an enterprise where investment in equipment or plant and machinery does not exceed Rs 25 lakh; small enterprises are those enterprises where the investment in plant and machinery is more than Rs.25 lakh but does not exceed Rs 5 crores. In India, Small and Micro Industrial sector with unorganised sector together provide over 46 crores jobs.This is greater than the organised sector, which provides less than 10% of the total non-farming jobs in India.

The informal sector and employment

Over the years, various surveys conducted by the government as well as industry bodies have found that most of the credit disbursed by the commercial banks goes to the organised sector industries, whereas the micro and small industries get only 4% of its credit needs from Financing Institutions (FIs). These FIs have been setup to help in creating self-employment opportunities by providing easy loan facilities to small and informal units, which are the economic driver of a major chunk of population.

Interestingly though, the corporate sector is considered to be the growth driver of the economy for the last two decades since 1991, with access to almost every possible financing option, tax leverages and other benefits. Yet, this segment is capable of feeding just 2.9 crores households. A study titled 'India's better half : the informal sector economy' by Credit Suisse clearly states that half of India's GDP and 84% of all non-agricultural work is informal. In fact, the informal economy in India is much larger than in most Emerging Markets (EMs).

The intuitive habit of drawing macroeconomic conclusions from the corporate feedback (and vice versa) is fraught with risks. After all, only half of India's GDP and 10% of India's employment are

* *The author is a Research Fellow at India Foundation*

in the formal sector. Further, only a fraction of the formal sector is listed. To take investments for example, investors intuitively use feedback from large capital goods and construction companies to form a view on India's investment cycle. This can be misleading since 'the tail is unlikely to wag the dog'.

Micro Financing in India

Micro Finance is an economic development tool whose objective is to assist the poor to work their way out of poverty. It covers a range of services which is in addition to the provision of credit. These services are savings, insurance, fund transfers, counselling etc. The microfinance sector has grown rapidly over the past few decades. Banks have also leveraged the channel of Self-Help Group (SHGs) to provide direct credit to group borrowers. The Indian economy largely comprises of micro-units, mostly in manufacturing, trading or service activities, which are 'self-financed enterprises'. And it is this informal sector which keeps most of the India employed and helps in sustaining economic growth. Interestingly, in the social context, according to the Government of India most of these small enterprises are owned by the people belonging to socially and economically Backward Classes.

New Initiative of Financial Inclusion

With the financial inclusion programme 'Jan DhanYojana' emerging as a major policy instrument in the country, microfinance has occupied centre stage as a promising channel for extending financial services to unbanked sections of population and to nurture the small and micro entrepreneurial ecosystem. At the same time, practices followed by certain lenders have subjected the sector to greater scrutiny, hence the need for strict regulation.

The government proposed the setting up of the MUDRA Bank and made it responsible for regulating and refinancing all Micro-Finance Institutions (MFIs) which are in business of lending to micro and small business entities engaged in manufacturing, trading and service activities.

As per release of Ministry of Finance, Government of India, the Bank would partner with state level and regional level co-ordinators to provide finance to Last Mile Financer (LMF) of micro and small business entities.

Functions assigned to MUDRA

The MUDRA Bank is primarily responsible for laying down policy guidelines for micro/small enterprise financing business including registration, regulation and accreditation /rating of MFI entities. MUDRA would be laying down responsible financing practices to ward off indebtedness and ensure proper client protection principles and methods of recovery besides development of standardised set of covenants governing last mile lending to micro/small enterprises. It would also promote right technology solutions for the last mile financers.The NITI Aayog also points to India's continuing challenge to ensure that this economically vibrant group remains engaged and its potential is fully realised. Taking cognisance of this, the most important responsibility that is

mandated to MUDRA is to formulate and run a Credit Guarantee Scheme (CGS) for providing guarantees to the loans which are being extended to micro-enterprises and to create a good architecture of Last Mile Credit Delivery to micro businesses under the scheme of Pradhan Mantri MUDRA Yojana.Under the aegis of the Pradhan Mantri MUDRA Yojana, MUDRA has already created its initial products/schemes. These interventions have been named 'Shishu', 'Kishor' and 'Tarun' to signify the stage of initiation, growth / development and funding needs of the beneficiary micro unit / entrepreneur and also provide a reference point for the next phase of graduation / growth to look forward to:

- Shishu : covering loans up to Rs 50,000/-
- Kishor : covering loans above Rs 50,000/- and up to Rs 5 lakh
- Tarun : covering loans above Rs 5 lakh and up to Rs 10 lakh

It is to be ensured that at least 60% of the credit flows to Shishu Category Units and the balance to Kishor and Tarun Categories.

Establishment

MUDRA Bank was created with a corpus sum of Rs 20,000 crores that was allocated from the money available from shortfalls of Priority Sector Lending for creating a Refinance Fund to refinance all types of MFIs and Last Mile Financers. Another corpus of Rs 3,000 crore was provided to MUDRA Bank from the budget to implement *Credit Guarantee scheme* for ensuring loans to the micro enterprises.

The above measures are not only helping in increasing access of finance to the unbanked but also in bringing down the cost of finance from the Last Mile Financers to the micro/small enterprises, most of which are in the informal sector.

Current Scenario

For financing the small and cottage industries, previous governments from time to time provided infrastructure to support this sector. SIDBI or 'Small Industries Development Bank of India' was mandated to provide easy funds to cottage and micro industrial units but the smaller point of presence of the last mile financers did not deliver efficiently. In addition there are many other players in the micro finance sector like SHG (Self Help Groups), Bank Linkage model started by NABARD, Non-Banking Financial Companies and other trusts, societies etc. Currently, the Existing financing mechanism or the MFIs are primarily dependent on commercial banks for money. Commercial Banks are required to channel 40% of their loans to the 'priority sector' which includes agriculture and other small loans, and they redirect money to these MFIs to meet the targets.

The MFIs provide loan at a very high cost as the banks and other refinancing agencies charge 12.5% (PLR) interest to these last mile financers and they add an additional spread of 10-11% to meet their operating costs. Consequently, loans extended by these micro units' are priced at around 23%-24%.

Most of these financers extend support to the private limited firms like proprietorship firms;

partnership firms and trusts which are considered as a major share of micro industries are deprived of funds.Margin money is also an important concern for these micro units as the existing financing sector requires them to provide for a margin amount of 33%. This forces the borrowing-units to seek funds from local money lenders where the interest ranges from 36% to even 360% and leads to exploitation of these people.

MUDRA Bank is to take over some of the refinancing activities of SIDBI and channel the money in a more focussed way to pave the path of inclusive growth and development and reach out to last downtrodden person - 'Antyodaya.'.

How it happened

In the budget of 2014, the idea of creating a new financial architecture for providing funds to the micro business units was introduced and to realise it, a committee was constituted. The committee submitted its report in February, 2015 rejecting the idea of creating a separate development and regulatory refinancing bank stating that the Reserve Bank of India had opposed it as a risk prone step.

But the NDA government was convinced that the existing financial system would not fund these micro industrial setups which in reality are the backbone of job creation in our nation. By ignoring the committee report, with the aim of improving the health of the micro and small scale sector, the government went ahead and established the MUDRA Bank. The Finance Minister emphasising in his budget speech that the 'inclusive growth' can only be achieved through the growth of the non-formal sector.

Why MUDRA Bank

Conventional economic wisdom emphasises investment for growth of production or increase in its all-round spectrum by adding capital. This would certainly raise productivity but would not integrate the poor income/ real goods/ services generating activities. If we approach the problem of rural development from the view point of bringing the poor into the income generating activity by making them directly productive, we can make their life more meaningful.

The current government focuses on poverty elimination rather than just alleviation which can be made a reality only if the poor are integrated into the national economic framework by involving them in their own ventures on a continuous basis. To nurture the micro and small entrepreneurial ecosystem, it was the need of the hour to provide one stop solution to the problems relating to development and financing of these micro units.

Expected Outcome

As a Bank to be established by legislation under a new law, MUDRA Bank will refinance, register, regulate all small business financing institutions (MFIs), it will also partner with regional coordinators to enable them to boost up the Last Mile Financers monetarily. LMFs play a crucial role in micro financing and including them into the regulatory system will prove out to be a potential game changer. On one hand, LMF will utilise its

local and regional knowledge, and of the borrowers potential and on the other hand, the regulations will bind them with the framework set by the MUDRA Bank which will include registration, client protection to recovery options and it would help curb the exploitations by harsh money lenders in rural India.

Challenges in front of MUDRA Bank

To implement all these policies, a faster pace of implementation and execution is required. Paralysis in implementation of policies as well as awareness among the people running micro industrial units especially in rural areas are some of the major challenges confronting MUDRA. Fortunately, the Modi government is working with a remarkable capacity which can be seen by the progress report of recently launched target based scheme for financial inclusion '**Jan Dhan Yojana'** where the government included 665.26 lakh more people into the financial ambit of banking sector till January 2015. Point of Presence of LMFs in rural areas is a major hurdle in reaching out to the remotest part of the country and use of post offices as LMFs might turn into a landmark in financial inclusion of these micro units.

One Year old MUDRA

MUDRA turned one this April and as per the data provided on the website it has already disbursed more than one lakh crores rupees to nearly 24 lakh micro units. Not only have the existing micro units benefitted but under the 'Shishu' category, many newcomers have availed of the concessional finance.

MUDRA- A Success

In his budget speech of 2016, finance minister Arun Jaitley declared that the target for the last fiscal had been achieved. Till April 2016, a total of 106,52,867 loan applications worth Rs. 2437596 crores had been sanctioned. The establishment of MUDRA would not only help in increasing access of finance to the hitherto unbanked but also bring down the cost of finance to the micro/small enterprises, most of which are in the informal sector. Further, the approach goes beyond credit only approach and offers a credit – plus solution for these myriad micro enterprises spread across the country.

On 4th April, 2016, Prime Minister Modi launched Standup India in line with MUDRA to fund the unfunded especially for the people from SC/ST and other deprived communities. This is in line with the vision of MUDRA, which is "to be an integrated financial and support services provider par excellence benchmarked with global best practices and standards for the bottom of the pyramid universe for their comprehensive economic and social development."

◆◆◆

Co-option of Pakistan: A new China Perspective

*Zulfiqar Shah

Pakistan has kicked off a new chapter in its strategic as well as economic history, which essentially can be dubbed as Sinification of Pakistan society and state. This would be first-ever initiative over seventy years history of the country that Pakistan has decided a major and futuristic shift in its strategic policy and planning.

In 2015, Pakistan and China launched China-Pakistan Economic Corridor (CPEC) worth Chinese investment as well as interest free debt of US$ 46 billion. CPEC consists of several projects of roads, pipelines and energy infrastructure.Both countries have signed 51 agreements and memoranda, which also includes US$ 33 billion investments in energy sectorand a US$ 44 million communication strategic project of China-Pakistan fibre optical cable.

The project connects China with Gawadar and Karachi Ports through road infrastructure. The major concern for China is oil security through this mega-engagement in Pakistan. The project would reduce the distance between China and Africa as well as with Europe. This is four-fold plan that includes Gawadar Port, transport infrastructure, energy and industrial cooperation. The Chinese engagement with Pakistan has promising as well as grey areas for the people of Pakistan.

Transformation of Pakistan

Some experts foresee that such a mega investment would transform Pakistan society in terms of political economy. Pakistan faces a decline in foreign investment. It also faces economic instability, particularly due to rising unemployment. It is said that through CPEC 700,000 jobs would be created, which would change the face of Pakistan society. Pakistan already confronts inter-provincial disagreements over distribution of resources, excessive centralisation and one province's monopoly over resources, employment and over state structures. This project would potentially create further economic cushion for Punjab province through projects and employment opportunities.

This would probably further intensify the conflict among Pakistani federating provinces. Such apprehension has been expressed through statements by the Chief Minister of Sindh. CPEC is no doubt a major economic engagement and creation of job opportunities that could transform Pakistan society; however it seems that the transformation would limit itself to the Punjab province.There are no doubt some aspects of infrastructure development that would have long-term sociologically impacts on whole Pakistan. It is the political economy of the country that would decide whether these impacts are positive and inclusive for all.

Zulfiqar Shah is a Sindhi refugee from Pakistan currently staying in India.

Challenges

Pakistan is readying 4000 security personnel to protect Chinese personnel in Punjab province who would be involved in different projects under CPEC. The pool of Chinese security component in Pakistan would rise to 21000, up from 17000 already providing security to the Chinese. Chinese engineer and officials involved in various projects in Balochistan are already facing serious security risks.

Pakistani armed forces has undertaken various military operations against secessionists in Balochistan during last couple of decades; the latter have suffered serious setbacks. However, the Baloch secessionists are still strong enough to resist CPEC and there are possibilities that the road construction and other projects may be delayed due to the Baloch insurgency.

China also plans to use ports of Sindh. Apart from CPEC, China intends to open about 17000 industrial units in Sindh. This would further cause non-Sindhi migration into towards Sindh from Punjab. Sindhi people are already protesting against Zulfiqarabad project. The government has recently allocated 50 thousand acre land for Bahriya town in Karachi, a project by armed forces to construct settlement facilities for hundreds of thousands. It is expected that Sindh nationalism would protest against further marginalisation of Sindhi people reacting to the possibility of hegemony of one province (Punjab) in the context of CPEC. There are possibilities that Sindhi nationalists may launch people's movements.

Meanwhile, the possibilities of disturbance by religious extremists in Khyber Pakhtunkhwa province are almost non-existent.

Strategic Isolation

Pakistan is feared to further tilt towards China and isolate itself in the regional perspective. Pakistan would have benefited from CPEC if it would have engaged with other international actor's economic interests. The Afghanistan scenario and the developments in the region suggest that there are possibilities that in the long term,delayed development in Gawadar Port may limit Chinese activities amid communication insecurities.

Recently, Iran and India have signed 12 agreements worth US$ 500 million including for the Chahbahar Port project. Besides, a three way transit accord was signed among Iran-India-Afghanistan. It seems that land-locked Afghanistan would strategically inch towards Iran in the context of Chahbahar and Bandar Abbas. This would further isolate Pakistan in the region regarding its designs to choke Afghanistan and Central Asia in the context of their dependency of Gawadar and Karachi Ports. This probably would give fillip to the Taliban insurgency in Afghanistan.

Conclusion

CPEC is the major strategic and economic shift in Pakistan's seven decades history of statecraft and foreign policy after its alliance with USA against Soviet Union. Pakistan's internal factors, political economy, federal conflicts, and the absence of progressive economic policy would reduce the benefits of CPEC. Regional developments may isolate Pakistan in the wake of CPEC in the Central and South Asia. There are possibilities that Pakistan would get Sinicised in the coming decades.

◆◆◆

Security and Strategic Outcomes from the Modi Visit to US

Deeksha Goel

Prime Minister Modi's US visit from 7-8 June, 2016 marked his last bilateral meeting with President Obama at the helm of affairs and was thus followed closely. India Foundation along with Heritage Foundation co-hosted a panel discussion on the Strategic and Security outcomes of the Prime Ministerial visit with a strong focus on defence relations. The event was held on 9th June, 2016 at Washington DC.The panel comprised of analysts from the two countries and included Mr Baijayant 'Jay' Panda (MP), Mr G. Parthasarathy (Former Ambassador of India to Pakistan, Myanmar etc.) and Vice Admiral Shekhar Sinha (Retd) among others.

The inaugural address was delivered by Ms Nisha Biswal, Assistant Secretary of State for South and Central Asia. Ms Biswal laid emphasis on what she called the *Modi doctrine*, a term coined by her to refer to Prime Minister's foreign Policy. She reflected on the fact that the Indo-US relationship could not be looked into only through the outcomes of this visit but one should look at the arc of the relationship. She recalled the efforts of previous governments in taking the bilateral relationship forward and termed India to be a key element of Obama Administration's rebalanced Asia.

The Keynote addresses was delivered by Ambassador Arun Kumar Singh, Indian

Ambassador to USA and Ambassador Richard Verma, US Ambassador to India. Both the envoys elaborated on different aspects of the bilateral relationship and termed the two nations to be natural allies. Ambassador Singh summed up the visit by highlighting the purpose to be of consolidation and celebration: consolidate what has been achieved, give it a momentum and celebrate all that has been done. He laid greater emphasis on growing convergence of interests among the two nations in the fields of defence production, cyber security, terrorism, trade and investment, renewable energy and science & technology which was hitherto an unexplored area. He spoke of the government's progressive steps towards ease of doing business and the optimism surrounding the US Business community since 2014.

Ambassador Verma on the other hand elaborated on the growing defence partnership and traced the origin of Malabar exercise to a post - cold war meeting in 1992 and shared joy on India being a major defence partner of the United States. He went on to talk about the Logistics Exchange Memorandum of Agreement (LEMOA) and also about theMoUs signed during the visit.

Mr G. Parthasarathy in his intervention recalled the shift of nuclear technology from General Electronics to Westinghouse and touched upon India's transition to a market economy, Look East policy and India-ASEAN relations. Mr Panda termed the visit seminal; one having a sustainable effect on future generations and informed the gathering of the progress in the 'bilateral relationship being music to the ears of our South East Asian neighbours'.Vice Admiral Sinha spoke on the importance of having multiple pillars to support a bilateral relationship instead of the case resting on a single agenda and went on to analyse in detail various aspects of the defence relationship often quoting anecdotes from personal experience.

◆◆◆

India Foundatin Delegation Visit to Iran

Shakti Sinha

An India Foundation team consisting of Shri NK Singh (ex-MP), Shri Bijaykant 'Jay' Panda, Shri Shaurya Doval, Shri Shakti Sinha, Prof P Stobdan (IDSA) and Shri Alok Bansal went to Iran as part of a larger ICCR delegation to participate in an International Conference 'India-Iran, Two Great Civilizations; Retrospect and Prospect.' This conference was inaugurated by Hon'ble Prime Minister Shri Narendra Modi on February 23rd. The local host was the Iranian language and culture institute (Farhaang-e-Jabaan-o-Adab-e-Farsi), which is part of the Sa'adi Foundation; both are headed by Prof Hadaad Adel, a leading scholar.

The focus of the Conference was 'Culture' and many scholars from both countries presented papers over two days. The India Foundation team participated in the inaugural and also spoke at the opening session (S/Shri NK Singh, Jay Panda and Shakti Sinha). The basic thrust was that building on the deep civilizational links was an imperative, and taking into consideration the signing of bilateral and trilateral (with Afghanistan) agreements on Chahbahar, there was a need to take the bilateral relations to a much higher plane. The speakers highlighted the political, economic and strategic dimensions of the relationship, going forward. Basically with the adoption of the Joint Comprehensive Plan of Action (JCPOA), which resulted from the successful culmination of the P5+1 nuclear talks, Iran is more or less open to business. (However, non-nuclear sanctions imposed on Iran relating to its sponsorship of terrorism, support to Hezbollah etc. are still in place). India and Iran could partner in the oil and gas sector where Indian investments and technology could be mutually beneficial but the relationship could not be limited to this. Exploitation of Iran's non-petroleum mineral resources and their value addition was potentially a

winner. Similarly, Chahbahar would not only facilitate Afghanistan-India trade but would enable the creation of a new economic zone encompassing Central Asia, Iran, Afghanistan, India and beyond. Trade and investment flows could be leveraged to create manufacturing hub-and –spoke arrangements, replicating production-supply chains that have worked well elsewhere.

The India Foundation team went to the Centre for Scientific Research and Middle East Strategic Studies and met its DG. It is a fairly large institute with over 70 employees including 30 young researchers. Its remit covers the region from Turkey to India and beyond, and takes out a quarterly (Discourse) in Farsi, Arabic and English. The gist of their point of view was that Iran was key to peace and stability in the region and that the great powers, including the US have started engaging with Iran. India was recognised as a friend, who continued to buy oil despite sanctions; however, there were pending payment issues. India was also seen as leader in the field of IT and IT-enabled services (ITES), which could assist Iran gain capability. And that India-Iran partnership including economic could play an important role in the region.

Later the delegation had a detailed meeting with a large group of diplomats and scholars convened by Centre for International Education and Research (CIER), presided over by its Head, Dr Hadi Solaimanpour. This centre is part of Iran's foreign ministry, a combination of a training institute and think tank. The only area studies program they have is on the subcontinent. Also present was a representative from the Institute for Political and International Studies (IPIS) a foreign ministry think tank and from Tehran University's India Studies department. IPIS functions under the control and guidance of the CIER whose head is part of the decision-making apparatus. IPIS has a number of study groups and takes out journals in Farsi, Arabic, English and Russian. It also has institutional linkages with Institute of Defence Studies and Analysis (IDSA) and with Vivekanand International Foundation (VIF), holding periodic bilateral discussions with them.

This was a very detailed meeting with a lot of history and analysis offered by senior diplomats, retired and serving, including a former Ambassador to India. Delays in finalisation of the Chahbahar and South Asian regional tensions and possible ways ahead were discussed. Overall, India's economic engagement was welcomed; it was unanimously felt that these should be deepened. A number of them expressed the need to have more non-official bilateral dialogue between the two countries.

The delegation also had a very substantive meeting was with Mr Moucher Mottaki, a former foreign minister who has studied in Bengaluru. Though Mr Mottaki was President Ahmednijad's FM and presently holds no official position, he represents a very important strand of Iran's strategic thinking.

Mr Mottaki stressed Iran's credentials in fighting terrorism, saying it made no distinction between 'good' and 'bad' terrorists echoing India's long-held principled position. He hoped that freed of third party influence, bilateral relations should take-off. He was particularly keen on Indian technologies as more relevant to Iran's needs. He was of the view that while the ISIS may be defeated militarily, its ideology could persist to attract people, so there a need to developing an alternative moderate narrative for the Muslim youth. He appreciated India's democratic institutions that were non-discriminatory and allowed all to participate freely.

India Foundation would continue to deepen its engagement with Iran's think tanks and opinion makers, and hopes to host a group from Iran in the near future.

◆◆◆

National Seminar on Hindu Jurisprudence: Texts and its evolving concepts

Itika Goyal and Rashmi Shetty

DAY 1 : Inaugural Session

Chair: Shri S R Bhatt, Chairperson, ICPR

Speaker: Justice L Narasimha Reddy

Complete transcript of the Keynote Address by Justice Reddy is separately published as article (Law is a branch of Dharma) in this issue.

Session 2: Marriage, Divorce and Widow Remarriage

Chair: Ms. Mrunalini Deshmukh

Speaker 1: Ms. Komal Agrawal - Women's dignity in face of violence: A critical analysis of Hindu Law, Dharma and Morality through Draupadi's questions in the Sabha

Draupadi asked two questions in the Sabha:

1. Whom did you lose first, yourself or me?
2. What is the dharma of the king?

Question 1 was addressed to the messenger to be asked to the king.The messenger, however, changed the question from one of sequence to that of ownership. She questions Yudhistir's rights over her after he has lost his agency. This is a juxtaposed as the rights of a man over his wife. Patrick Olivelle wrote that *Dharma* can be roughly translated to law and order. When Draupadi asks— "Is this really YOU who is doing this to me?" Bheeshma is legally called into question (Karna's discourse on the wife being the husband's property). It's cosmic justice that vindicates her courage and saves her, while all the elders and the men stay silent and watch. Therefore, the second question on the dharma— the failure of the dharma of protection is posed to Yudhistir and Dhritrarashtra. Can this also be significant to the failures of modern legal setup?

The speaker also highlighted two types of male lordship, viz., 1) of kinship and 2) of family

Speaker 2: Ms. Pooja Singh - Changing perspectives of maintenance in Hindu Law

Manu says that an old man, wife/woman, and a child must be maintained even with a thousand wrongdoings. According to Hindu Marriage Act 1955 (Sections 24 and 25) even a man is eligible to demand an alimony if he is unable to fend for himself. The father-in-law is expected to take care of the daughter-in-law in cases where the husband dies. Hindu adoption and maintenance code makes it necessary to provide for maintenance in cases

"

where the husband was involved in domestic violence or illicit relationship. Also, after the death of the husband, the widow is given maintenance by the in-laws or from the husband's estate. In Govindrao vs.Anandibhai case, Js. Dayal Singh pronounced that alimony has to be granted even without a legal marriage i.e. in case of live-in relationship. This is true even for the Muslim Personal Law. The 27th, 54th, 55th, and 124th Law Commission reports maintain that speedy justice has to be sought in cases of maintenance.

Comments, Q & A Session:

There was also a comment by an audience member about the existence of three types of vrinas (debts) and five types of yajnas mentioned in the Vedas, while no Sanskrit equivalent of "rights" exist.

Speaker 3: Aruna Ganesh - Hindu marriage

There are 16 sanskaaras or sacred ceremonies which are necessary for human evolution. In the story of Kunni, she practices austerity to attain moksha, but it is denied by Narada because she was unmarried (marriage was the only way for women to attain moksha). Even the word *Puttr (*meaning son) comes from *putt- Puttr,* being the redeemer from hell. There is always a personal bias in the interpretation of the 'Smritikara'. According to Rig Veda, a woman can look for a man of her choice after 3 menstrual cycles if her father does not find her a suitable groom. However, Manu stressed on eugenic development- the concept of 'Pindara Gothra' disallowed inter-Varna marriage (mentioned in Deshachara/ Sadachara).

In parts of South India, marriage between a girl and her mother's brother is a common practice. There was a ban on two daughters being married off to the same family. Even girls from two houses cannot be exchanged mutually between two families as brides. Indian law was much more progressive than its Western counterparts; In UK, the Deceased Wife Marriage Prevention Act, since repealed, banned a man from marrying his dead wife's sister.

Qualification for a groom:A man is supposed to possess youth, intelligence and congeniality.A pre-marital test for impotency was allowed. *Niyoga*(getting a child from a priest) was allowed if the man was impotent or dead. Those that had leprosy, epilepsy or lunacy were disqualified

Qualification for a bride: Apastamgraha sutra—Bodily and invisible characteristics, both must be present**.** A man could look for in a girl "whatever pleases his mind"**.** Intelligence and family were of primary importance, followed by wealth and beauty**.** Her status of being a *Kanya*or "virgin" was very important**.** Kanya widows could marry at their own accord**.** A child born to a widow, if remarried, was addressed as "born of lust".

Js. CJ Patanjali noted that "every Hindu marriage is a *Brahma marriage*" (Brahma marriage is one of the 8 types of marriages allowed and mentioned in the Manusmriti). Among other types, violence by Kshatriyas against women for marriage etc. was allowed, which is now disallowed by law. A woman could abandon her husband and take a new one if the husband was missing, dead, ascetic, outcast or impotent. Among the 8 forms of marriage, Kautilya allowed divorce for the 4 unapproved types, and not for the 4 approved types. Mutual disaffection could be accepted as a ground

for separation. The Special Marriage Act 1872 is believed to be one of British coloniser's first moves towards reforms in Hindu Personal Laws. It is a challenged but popular belief that the British kept away from meddling with the Hindu Personal Laws. It was a piecemeal legislation that later developed into the Hindu Marriage Act.

DAY 2 : Session 3: Maintenance & Succession

Chair: Shri Manoj Mishra

Speaker 1: Ms. Saema Jamil - Enigmas in Hindu Law

The Hindu Succession Act (1956) had two amendments in the recent past. Firstly, giving full ownership to Hindu women and secondly, the concept of partition. Before 1956, once widow died, her property did not go to her own heirs. The 2005 amendment has done away with doctrine of survivorship. The problem before the amendment was that a coparcenary daughter could get property of the father and not of her mother.

According to Hindu Minority and Guardian Act, the natural guardian of child is the father and after him, the mother. "After" here means the absence of the father. People say that this is about women empowerment but is it? Ordinarily the mother would have the custody of child only till five years of age. While there is no mention of adopted daughter, for an adopted son it's the same i.e. natural guardian will be father and after him his mother. Hindu Marriage Act is not gender neutral. If certain conditions are not fulfilled then alimony/ maintenance can be revoked, i.e., if the woman was 'unchaste' or if a man had sexual intercourse. The burden of proof was unequal.

If this act was seen as gender neutral then people won't feel the need to change. Therefore, there is a need to change the perspective of looking at it.

Speaker 2: Ms. Shikha Sharma - Position of Women in Hindu Law or Does Hindu Law Favor Highest Position to Women

Hindu law is a branch of dharma and is one of the oldest laws. Women are seen as deities of prosperity. There is no reference of child marriage in Vedas. Women used to enjoy more freedom in Vedic time. There are a few contradictions in Manusmriti. It says that a father should protect daughter, a husband should protect wife and a son should protect mother. Therefore it is seen as saying that women are dependent on men and that men have to protect them. But it's a wrong interpretation. Women are precious and thus, she needs to be protected. No one protects stone but gold and diamonds need to be protected. Women used to perform managerial activities in ancient India. The Arthashastra lists women trained for armed forces. Therefore, men and women are not competitors, they balance out the universe.

Speaker 3: Ms. Prema Bhushan - Law in Relation to Custody of Child and Adoption

Personal law is entangled in rituals and religion. Indian society is governed by customs of four main religions – Hindus, Muslims, Christians and Parsis. For all these, faith turns into law. Injustice meant the need for a codified legislation. Personal laws apply to a particular segment. It doesn't matter how a person identifies himself/ herself. It is how society identifies him/ her that the law is applied. The patriarchal nature of law for adoption and custody of child can be seen as the father gets absolute right on property and child.

The Guardian Act placed the welfare of child utmost importance for the first time. Hindu Minority and Guardian law says that mother has a right over child in the absence of father. Why does it have to be in the absence? Absence here means complete negligence of child by father. Therefore, even when father is alive, mother can become the guardian. This shows that child welfare is given utmost importance. Islam was first to distinguish between custody and guardian. For custody mother was seen as most suitable but for guardianship father was the natural guardian. Law of adoption came due to secular and religious sides of adoption. The religious aspect is the need to have an heir to fulfill the funeral obligations. The secular aspect is taking the family name forward. There it was required only to get a son.

Hindu personal law says that only an adult can adopt a child. Hindus can take and give adoption. The need was seen to give love to orphans and to give childless parents an heir. Earlier daughters could not be adopted but when women got the right to adopt, daughters could be adopted. But a woman can adopt only if her husband is not alive. But the amendment made it possible for a woman to adopt a child with the consent of her husband. There is a bar on the age limit beyond which a child cannot be adopted so that child could get attached to parents. Now even a divorced woman can adopt. If she gets remarried, adoption would still hold.

The Juvenile Justice Act gave the right to adopt children of same sex. Women can now be the karta of the family and thus can become the custodian or guardian. Therefore, this law has a great provision for adoption but other religions don't give this much right. But this is not a fundamental right. No other personal law identifies adoption.

Session5: Comparative study of Dharma and Artha tradition

Chair: Mr. S.K. Singh

Speaker 1: Shri Vivek Pandey- Axiomatization and Quantification of Principle of Justice

Aximotization means a value that holds even without any proof (derived from mathematics). If injustice is increasing, we treat it with laws, methods or pathological support. We have a theory of law, but not a theory of justice. But the highest level of justice is unknown.To which level we are going to achieve justice?

Speaker2: Shri Raghunath Ghosh- Crime, Punishment in the light of Dharmashastra

In Manusmriti, there are 4 pre-requisites of a king:Annikshiki (logical faculties), knowledge of the three Vedas (except Yajur), knowledge of commerce and agriculture, knowledge of Dandaneeti (IPC). The king was also required not to have an addiction and be of the Rishi-type (Rajorishi).

When it comes to punishments, there were four types of Dandas:Bakdanda (verbal), Dheekdanda (physical), Dhanadanda- Fines (money), and lastly capital punishment. Lower punishment for higher crime or vice versa wouldn't work. The punishments ranged from fine, rehabilitation, banishment, imprisonment to capital punishment. Self-defense was allowed. Kings were required to follow a process to tackle the crimes. He must first talk, then ask for money, followed by a strategy of divide and rule. If none of this work, only then danda could be exercised. A king sees his subject's troubles not through his own eyes, but the messenger's eyes.The common crimes of the time were classified into crimes of:Measurement and adulteration of food (3 types of measurement: Tulamana: Less or more quantity, Pratimana: Gold karat, Paddy weight), Cheating and thieving, forgery, bribe taking, fake astrology or magic, hoarding (even in Gita, it is criticized) etc.

The speaker also criticized Manusmriti for its casteist laws. For instance, if a shudra abuses a Brahman, the king chops off his leg/hand while the punishment is not as severe for a Brahmin who abuses a shudra.The concessions on the punishments were unjustly decided on the basis of the hierarchy of the castes. However, a Brahmin was punished more severely for crimes such as hoarding (food).

There were also instructions on how a case has to be fought compiled in "Vaadavidhi", and on interpretation of laws in "Mimansa", and on evidence analysis in the "Nyayashastra", which included *Pratyaksha* (perceptual evidence) and *Anumaan (*circumstantial evidence).

Speaker 3: Mr. Jigar Inamdar- Sayaji Rao Gaekwad's public administration contribution to Hindu jurisprudence

Sayaji regime's seven laws, famously called *Nibandh* which were very progressive in nature:

1. Hindu widow remarriage 1901

   He setup 63 offices across his kingdom only for widow remarriage

   Any law broken guilty would be subject to fine of Rs. 150 and imprisonment

2. Hindu marriage & divorce

   It was so progressive that they had to make amendments against outsiders availing its benefits.

3. Hindu Purohit relationship rule 1895

If people were not happy with the purohit's recital, he would be punished.

A wrongly recited shloka would incite a fine of Rs. 25, and a ban on further practicing.

4. Child marriage prohibition Act 1895 (acting since 1896)

   A child below 8 could not be married off

   Sayaji faced immense resistance from his own kulaguru, but he convinced everybody

5. Hindu guardian law

   Man couldn't spend his money by putting the well-being of his family at risk.

   1909- A child is not burdened with his father's loans.

6. Identity of a Hindu

   Who is a Hindu?

   Anybody except the ones who are not born Hindu or those who quit it.

7. Compulsory education Act 1936

All above the age of 8 were to be sent to school.

Speaker 3: Mr. KanuAgrawal - Constitutional religious freedoms in India

Articles 25 and 26 specify the negative rights given to individuals and (by extension) to institutions against State intervention. Art.25 is an individual right whereas Art.26 is a denominational right. "Doctrine of Essentiality"says that if some practice is "essential" for a religion, they can exercise it. In the Shirur math case,the 9-judge bench decided that the institution can use its power in matters essential to the religion. This gives scope for what we may call a 'legal ambiguity' due to the scope for vast range of interpretation of 'essential'.

Over the years, the appointment of the temple priest has become secular. Article 25(2)(b) says that to promote social welfare and reform, Hindu temples should be thrown open to all classes. In Saifuddein Sahib vs. the State of Bombayapostasy and ex-communication to the mosque was allowed as an "essential" for the religion, and hence non-justiciable.

Comments, Q & A Session

There was a comment from an audience member on the subjectivity and bias of the judges on these matters: Late Justice Krishna Iyer had once remarked, "You tell me the bench, and I'll tell you the judgment". Secular nature is attributed to the state, not to a person.

DAY 3 - Session 6: Sources of Hindu Law

Chair: Prof. S. Shiva Kumar

Speaker 1: Shri Bhavatosh Indraguru – Epistemological Foundation of Jurisprudence: Configuring and Knowledge in Jurisprudence

Historical events impacts socio-religious acts. Truth is necessary. Truth can be defined in terms of the degree of appropriation. Object should not depend on the subject, only then would it become absolute. If something was not true, it was invented. Truth represented attitude and experience. Height of thinking is infinite. Knowledge must be like Brahma so that it can speak the truth. Jurisprudence intends universality that is embodied in the absolute which is Brahma.

Speaker 2: Shri Raghav Pandey – Right to Property and Hindu Women

The process of formation of Hindu law is called codification. It takes laws from different sources and arranges it in an understandable manner. Only Hindu law has been codified to a large extent. There is no particular book for Hindu Law. Law makers will always make laws that suit them and not the society. Hindu society has undergone periods of change and while codifying we take the most recent versions. There are two kinds of social groupings in India – Patrilineal (mostly found in India) and Matrilineal (In some parts of north east). None is wrong. The problem is when it becomes patriarchal which is dominance of one gender over the other.

Hindu Law is patriarchal. Report of the Law Commission said that some major amendments are required. Section 6 after 2005 amendment gave equal rights to women of coparcenary (a share by the virtue of being born in that family) in father's property. Due to society's perception this amendment didn't come till 2005. This divides both benefits and losses. If property has a loan then daughter is equally liable to repay it.

Section 23 of Hindu Succession Act did not allow married daughter a share in parental home. This section has been deleted. Now a daughter can demand partition of the property even when parents are alive. This does not make sure that partition happens after the death of the parents. The criticism is that wives are still not given this right. Every personal law needs to be implemented uniformly and treated equally.

Speaker 3: Dr. Kishore Dere – Origins and Evolution of Hindu Law from Time Immemorial to 21st Century

There is a lot of generalisation and primary sources are unknown. There is under-estimation and over-simplification. People criticise but are not clear why. Reforms could help in doing away with rigidities. But even at present it is difficult to get justice. Divorce should be made more flexible according to recent times. Keeping intact original sources, laws should be adapted according to contemporary times.

Chair:

Everytime there is talk about Hindu Law, people are concerned about property rights especially for women. Besides property, parents give a lot of values and culture. We need to take it forward. Western society was not thinking about future. Therefore, they were living in a credit society and Indians were living in a debit society.

Session 7: Concepts of Sadachar in Hindu Jurisprudence

Chair: Shri Sandeep Mahapatra

Speaker 1: Ms. Srishti Banerjee - Elders - The Forgotten Base of Modern Families and the Role of Law to Protect their Rights

India has the fourth highest population of elderly with a 10.38 crore elders. Elder abuse is now addressed in various countries. Rights of elders has been added to universal human rights. In 1990, the UN General Assembly adopted 1st October as International Day of Older Persons. The Toronto declaration highlighted ignorance of this issue.

In India, state has to make proper provision for old age people. Himachal Pradesh was the first state in India for the protection of parents. People above the age of 60, are categorized as senior citizens while below 60 as parents. Indian culture is respectful to elderly but things are changing. This legislation is not used much due to love for children, lack of awareness and financial constraints.

Speaker 2:

Women in India are ignorant about their rights. They voluntarily reject their right in property due to love for brother. Women have inferior status in India. In Vedic and post-Vedic period, women were influential but there was no provision for property rights. Female entering a family through marriage is not a coparcener; that is limited to daughters.

Now women have dual sharing. After marriage they have right in maternal and in-laws home. But husband's family might misuse a woman for her property. It also leads to spousal violence for female demanding share in spouse's property.

Chair:

People are fighting over property rights. Can a system be developed to prevent its misuse? For this it is needed to delve into the past. Manu might have said something that was useful. Was there a bandwidth to make teachers capable enough to make law students delve deeper. More research was required to develop a system that is acceptable to everyone. Possibly the Marxist way was another way of looking at law.

Session 8: Emerging Challenges before Hindu Law

Speaker 1: Ms. Kamini Gogri-Jain view of law

Manu was not a Hindu nor was Buddha a Buddhist, nor was Mahavira a Jain. Their religions were formed after them. In Judaism, Islam and Christianity, there is a concept of one book and one god. Jainism mainly talks about consciousness and non-consciousness. All living creatures were believed to be a soul. Ahimsa is the crux of liberation. 'Shramanatva' or giving up is an important part of Jainism. There are two sects- Shwetambars and Digambars – in Jainism; these belong to groups called "sanghas". In Jainism, it is believed that a person was a male/female/

transgender based on previous karma. So, nobody could be looked down upon. Therefore, homosexuality is accepted. A female is said to be not able to attain moksha because they cannot give up clothes like the digambara males. However, Shwetambars argue that male/ female psychology is as different as their physiology. Thus, psychology of people had to be taken into serious consideration in law making.

Speaker 2: Ms. Neelam Seam and Ms. Neha Singh - Empowerment of women in Hindu Law

There have been three main periods in Indian history. **Vedic period -** women were assumed to have enjoyed utmost freedom and respect. **Medieval period**- the status of women was said to have deteriorated due to invaders and their practices. **Contemporary period -**the struggle for emancipation and empowerment of subjugated women begins. Discrimination on the basis of gender is allowed in our law only through protective measures.

Speaker 3: Ms. Anupama Gupta - Irretrievable breakdown of Marriage and Hindu law

In the Naveen Kohli vs. Neeru Kohli case, the judgment reads - "A marriage is a combination of roses and thorns, and if the roses disappear, then only thorns remain."Thus, a lack of compatibility is considered a valid ground for divorce. If there is no fault of any party, or no reason to diverge, but nothing could make the marriage work, they must be allowed to separate. Marriage in Hinduism is a sacrament, in Islam a contract and in Christianity a sacred knot. The 71st report of law commission (1978) accepted irretrievable breakup as a ground

for divorce. It has been criticised on the ground that it overstretches the need to protect women.

Valedictory Session

Shri Ram Madhav (Director, India Foundation)

Hindu jurisprudence had been greatly neglected in India, and is a shrinking area in terms of research and study. It should be a primary area of our future concern, with the involvement of different stakeholders from all walks of life, with a due consultation from the renowned Dharmacharyas. He also spoke about the importance of women in our familial system.

Ms. Lalitha Kumaramangalam (Chairperson, National Commission for Women)

A woman's position in the family and society has changed, since the time of the conquerors. Economic status of India had a lot to do with the restriction of women to their households. Many laws made until 1980s had constantly looked at women as objects. For instance, the four personal laws were biased against women. Law is not absolute; its interpretation matters. Currently, there was only one female judge in the SC out of 29. She called for equal opportunity for women, rather than equality.

ShriV. K. Dixit (Retd. Professor of Law, Delhi University)

Law was too serious a matter to be left to the lawyers alone. Colonisers wanted to make Hindu law a hybrid law. India has come a long way from *Niyog* to adoption, irretrievable marriage to divorce, and from untouchability to its abolition. It is a misconception that Hindu law has existed since pre-modern times; ours was an agrarian economy, therefore, industrial law could not work. In fact, there had been two major problems in Indian law since the first war of Indian independence. First was the need of the coloniser to reduce the cost of governance and second was creation of legitimacy of their rule.

Marx and Engels did not believe that Asia was feudal, and developed the Asiatic mode of production. The British hated Marx because he spoke for the oppressed. "History of East is the history of religion" was the popular belief. In Asiatic mode, individual had no property; it was all state-owned. Indian agriculture was destroyed by the British system. It was believed to be "white man's burden" to civilise Indians. In India, the religious trumps the political, while in the west the political trumps the religious. Maine opined that Hindu law was static. However, Powell in his own regime rejected Maine's assertion. We ought to obey God instead of man. In Arthashastra, however, King's law was the most superior. The king had to be obeyed. One must remember that the code of Manu was not the last, and other subsequent codes have changed Manu. Maine believed that neither law nor economics in India would progress. In ancient India, Khappanchayat or local courts exercised the Hindu law.

◆◆◆

Felicitation of Shri Maithripala Sirisena, President of Sri Lanka

India Foundation organised a program to felicitate the Hon'ble President of Sri Lanka, His Excellency Mr Maithripala Sirisena on 13th May 2016. Shri Shaurya Doval, Director, India Foundation, in his welcome address, talked about the pivotal role played by Mr Sirisena in bringing key reforms in Sri Lanka in form as well as substance since taking over as the President of the country.

Speaking on India-Sri Lanka relations, Minister of State for Petroleum and Natural Gas, Shri Dharmendra Pradhan said, ***"There is an umbilical connection between India and Sri Lanka."*** Emphasizing the significance of trade relations between the two nations, Shri Pradhan stated that Sri Lanka is India's largest trade partner in South Asia with bilateral trade of over 4 billion dollars. He also spoke about the extensive efforts made by the Government of India for strengthening engagements with Sri Lanka in the oil and gas sector. He concluded his address by stating- ***"India for you (Mr Sirisena) will be a home away from home."*** This was followed by the felicitation of Mr Maithripala Sirisena by Shri Dharmendra Pradhan.

Minister of State at the Prime Minister's Office (PMO), Dr. Jitendra Singh, also presented a token of appreciation to Mr Sirisena. In his address,

Dr. Singh underlined the commonalities in stakes, interests and priorities of both the nations in spheres ranging from culture to heritage and from geopolitics to strategy in a rapidly changing global order.

He reiterated the vision of Prime Minister, Shri Narendra Modi, to ***'carry the neighbours along'*** and expressed his confidence in re-emergence of the entire South Asian region as a force to reckon with in the days to come. Dr. Singh also threw light on the comprehensive research activities being carried out by India in the field of space research which have been extremely beneficial to neighbouring nations including Sri Lanka. Concluding his address, Dr. Singh said, ***"We (India and Sri Lanka) would go ahead in a big way in the times to come."***

Shri Surya Prakash, Chairman, Prasar Bharti and Director, India Foundation offered a vote of thanks to the Hon'ble President of Sri Lanka, Mr Maithripala Sirisena along with the Hon'ble Union Ministers Shri Dharmendra Pradhan and Dr. Jitendra Singh, and the guests present for gracing the occasion.

◆◆◆

IDU Campaign Managers' Meet – A Report

*Rajat Sethi & Shubhrastha

Poll Managers' meet, jointly hosted by the International Democrat Union (IDU) and UK Conservative Party, recently concluded in London from 30th May to 1st June, 2016. IDU had invited the BJP among the other 15 member political parties to discuss the latest trends in election management and sharing best practices for campaign efforts. The meeting was held at the Campaign Headquarters of the Conservative Party.

The meeting was held in the backdrop of UK's national referendum on Britain's future with European Union. Both the 'Remain' and 'Brexit' campaigns have so far been apolitical, however the Conservative led national government has officially sided with Remain.

The meeting predominantly focused on election campaign strategies being deployed by the participating center-right parties. Representatives from these parties shared their ideas and presentations on the recent elections held in their nations and also talked at length about strategies that have been game changers in impacting electoral processes.

Data analytics and teasing out strategies from what data communicates seem to have been the latest established success norm with most of the recent elections. In the words of Klaus Schueler, Chairman of Campaign Managers' Committee of IDU, "Understanding data signals are key to devising strategies for elections. Data never lies and therefore one must absolutely trust data for comprehending a political situation."

Schueler went on to demonstrate how voting patterns and voting behavior were studied in detail via surveys and feedback forms before any strategic input was considered for elections by CDU, a center-right political party in Germany. Elaborating on the role of data, Alex Skatell, American entrepreneur and political advisor to the Republican Party shared, "Data-centric insights help devise communication strategies and

**The authors worked on the BJP campaign for recent Assam elections.*

campaigns that are more robust and measurable. The scope of making mistakes in communication strategy lessens and room for course correction increases manifold."

While talking about Research and Data Challenges, Chris Scott, Director of Voter Communication for UK Conservative Party, noted, "One of the reasons why the Conservative party has an edge over its opponents is the way in which we have access to every household and voter. Our data sets are neatly arranged and quite comprehensive. With such a huge organized bulk on our plate, we are able to run macro- and micro-campaigns according to the need of the campaign cycle. However, what is to be said and most importantly what not to say are core questions for any elections."

While it is true that data plays a very important role in elections, it is also important to note that data alone can only supplement the campaign efforts. The key to a finely run campaign is messaging. What a party conveys to its voters and how it conveys it is of utmost importance to affect electoral outcomes. The selection of political messages is not an ad hoc exercise and should therefore be done through representative focus groups and 'persuasion data models'.

Talking about the need to convey key messages to electorates, Greg Hamilton, Chief Executive of the New Zealand National Party averred, "Focused and consistent message is essential to the success of any campaign. We must learn to zone down our message concerns to maximum three ideas. It is important to limit the scope of communication to a few ideas rather than dabbling in multiple voices. At the end of the day, when the voter goes to the polling station, he/she is going to remember just two or three messages you convey." Elaborating further on the need for de-clutter in communication, Dag Terje Solvang, Campaign Manager for Conservative Party in Norway emphasized, "Even in visual communication, one must focus on just two or three primary shots or photographs that stick to a voter's mind. The more we inundate our screens with visuals, the more cluttered and scattered our communication is going to be."

Besides, the strategies behind 'how to communicate', the Campaign Managers' Meet also stressed on the 'what to communicate' question. Christian Scheucher, Founding and Managing Director of Christian Scheucher Consulting in Austria remarked, "It is high time we address matters as they are. Since we know from data insights what it is that voters concern with the most and what issues they strongly feel about, there is no reason why one must beat around the bush to address key concerns. Call black as black and white as white. Sometimes, often being on the conservative side of politics, we leave major issues addressed at the risk of being politically incorrect. But, one must understand, that the world is suffering from huge politically incorrect acts and these need to be talked about."

The delegation from Brazil and Bulgaria spoke about the challenges and issues concerning their democracies and expressed the need for more organized campaigns. Delegates from Ghana, Hungary, Australia, and Sri Lanka also represented the conservative parties from their respective nations.

As representatives from BJP, the authors shared their experiences from the recently concluded Assam Assembly Elections. They highlighted the problem of illegal migrantion from Bangladesh and how this issue became the key electoral plank for the elections.

International Democrats Union is an international alliance of center-right political parties created as a forum for policy and organizational discussions to further center-right ideologies across the globe. Currently, IDU is a working association of over 80 political parties across the globe. BJP joined the IDU earlier this year on February 25, 2016.

◆◆◆

India Foundation Dialogues

22 June 2016

Mr. Ali Hussain Didi, Former Ambassador of Maldives to European Union
Theme: **Growing Radicalization in Maldives**

15 June 2016

Amb. Zalmay Khalilzad, Senior Foreign Policy Expert of United States & Former Ambassador to Afghanistan, Iraq & United Nations

2 June 2016

Mr. Hekmatullah Azamy, Research Analyst, Centre for Conflict and Peace Studies, Kabul
Theme : **Taliban after Mansour**

Jihadist Threat to India

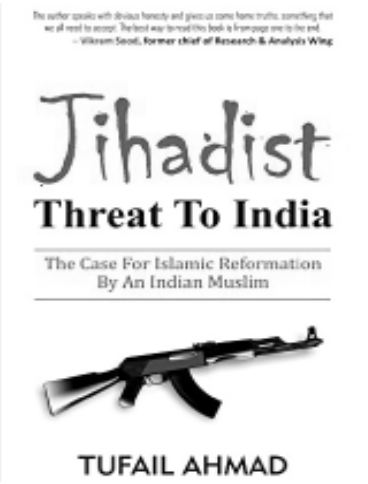
Author: **Tufail Ahmad**

Publisher: Infolimner Media Private Limited

Price: Rs.798/-

Book Review by:

Syed Ata Hasnain



Tufail Ahmad's book published by Infolimner carries the full title –'Jihadist Threat to India : The Case for Islamic Reformation by an Indian Muslim'. It is a 346 page effort with a very appropriate foreword, author's introduction and eight chapters on social and political themes relating to different aspects of Islam in India and Pakistan. The last two chapters dwell on the larger issues of Islamic Reformation and Global Jihadism.

A little on the background of the author will help appreciate the central theme of the book which appears to build a case for India's Islamic space being the most suitable for a future reformation model. He is currently Director, South Asian Studies Project at the Middle East Research Institute, Washington. His arrival there has obviously not been through a path of roses. Coming from rural stock and having initially studied at a madrasa, Tufail went on to Aligarh Muslim University (AMU), Jawaharlal Nehru University (JNU), Indian Institute of Mass Communication (IIMC) and Kings College London. He has worked with many media and strategic institutions. He is no doubt a well-established name in the world of journalism relating to Islamic issues. In a field which is yet emerging Tufail Ahmad is a voice which projects the need for reformation in Islam. His own success story as a journalist and researcher cum academic has two important aspects which probably shape his thinking. First, are the opportunities which came his way in an India accused of being unfavorable to Muslims. This shaped his positive mind and gave him moderate ideas which continue to influence him. He had a bad experience at AMU during the time when Salman Rushdie's Satanic Verses was released; opposing its ban brought him into confrontation with more radical minds and probably cemented his thoughts on Islam. His abhorrence towards any form of radicalism in Islam and the necessity for contextualization of the faith to modern times appears to remain an abiding belief.

It is important to remember that Tufail Ahmad belongs to a cusp generation. Many Muslims of his generation remained confused about their position in Indian society but it is also the generation which evolved itself to look for a cemented place in Indian society. He is obviously one of them who

have an enduring belief in India. His writing is accordingly oriented as comes out clearly in this book.

Tufail is fortunate to have got Vikram Sood, former Director R&AW to write the foreword. It is an excellent start to the book, clearly demarcating the emphasis on radicalism in Pakistan and the Middle East, including the potential of its applicability in India. Equally appropriate is Tufail's introduction. It is the description of his journey of evolution through the years of varied education and on the job training. The explanation about Pakistan's campaign to exploit India's fault lines could have been a little more elaborate about the Zia Plan conceived in 1977. The Pakistani involvement is later discussed in great detail while relating it to Kashmir.

Chapter 1 is about the idea of India and how it is shaping. A collection of essays without making any pretension of continuity and linkages carries that theme, focusing on democratic and secular credentials of India. It justifies why India is the best nation for Muslims to live in because of the freedom it offers, unlike the nations of West Asia.

The first of the essays of the second chapter takes up an interesting theme; the inability and frustration of Al Qaida to recruit Indian Muslims. This is a phenomenon which Indian Muslims proudly wear on their sleeve. Even as Al Qaida succeeded in bringing in surrogates in other parts of the Islamic world, the Indian Muslims shunned it because of the freedom and stability they enjoyed in India. The essay on Al Qaida in Pakistan is an elaborate and much needed explanation of the intricacies of terror in Pakistan and Afghanistan. It establishes various linkages between surrogate groups and describes the Lashkar e Toiba (LeT) as one of the most dangerous organization and likely to emerge with a near permanent presence in Pakistan. The kind of coordination LeT has been able to establish between ideology, business and nation-building is dangerous and has all the portents of attempting to rule the roost in Pakistan. Tufail is of the opinion that it is wrong to conclude that Al Qaida has weakened. In fact he makes a strong case for the world to believe how deeply Pakistan's Inter Services Intelligence (ISI) is involved in propping up Al Qaida in the Indian subcontinent. The other essays in this chapter/section are short and very readable; they can also be read as stand-alone stories.

Chapter 3 focuses on Radicalization among Indian Muslims. Unfortunately it is not a cogent chapter but again back and forth thoughts are expressed in essays. It is this chapter that one hoped could have been dealt with a historical narrative. Perhaps the birth of the Jamat-e-Islami, the Tablighi Jamat and such organizations could have been discussed here with the current legitimacy of these. However, the status of various groups in India is well brought out along with the need for counter-radicalization. The attempts of the ISIS (Daesh) to recruit Indians are discussed, the conclusion is that all is not as well as we may wish to imagine. While the ratio of recruits for Daesh from India is low, the potential remains high and unpredictable. Perhaps one of the areas which could have been examined in this chapter is the increasing propensity of Muslims in the South getting more radicalized. The common belief is that the influence of the Gulf is more pronounced in

Southern India because of the larger ratio of Muslims from there being in the Gulf.

Chapter 4 dwells at length on Pakistan. From Jinnah's Islamism to Musharaf's attempts to change the narrative and being caught in the vortex of a Pakistan undergoing turbulence through its self-created mechanisms of Jihad the various sections explain it all. There is an interesting but rather long essay on Pakistan's Jewish problem which brings out the Israeli connection and why Israel remains opposed to Pakistan. The Baluch problem, however, is given short shrift considering it is the area where quid pro quo is always possible. However, Tufail makes a strong case for the world to examine the Pakistan Army's war crimes in Baluchistan. The essay does not cover the China Pakistan Economic Corridor (CPEC), which Pakistan seems to believe will change the destiny of Baluchistan.

Chapter 5 is a continuing narrative on Pakistan and establishes why Pakistan is unlikely to change. An essay on Maldives and the rising stamp of Jihadism there is interesting. A lot is given to the notoriety of the ISI, describing in detail its role in guiding Pakistan's Jihadi destiny. It concludes that nothing will change regards Pakistan's negativity and self-belief that it can guide its destiny through the notoriety of its Army and the ISI. However, the Pakistani people are spared the ignominy of connection to the belief in these institutions. A review of India's relations with Pakistan is the last essay and it does give a list of measures India needs to do even as it freezes relations with Pakistan, which is recommended.

The last three chapters are a review of politics of Islamic radicalism worldwide. Tufail goes on to discuss subjects such as Bangladesh, lone wolf attacks and the US system of counter terrorism. All these and more are interesting takes again in stand-alone mode. An interesting one is the essay on trends within Turkey which are overturning the successful secular model of Kemal Ataturk. 'Erdoganism' is discussed but the real reasons for Turkey's counter- revolution appeared to have evaded the writer in this essay. The treatment meted out to Turkey by rest of Western Europe, by including it in NATO and refusing entry to European Union, has had a major effect on the psyche of the Turkish citizenry. This has helped in the counter-revolution and at no time has this been more evident than at the height of the Daesh crisis when Daesh fighters used the open borders with Syria to enter the war theatres of Iraq and Syria.

What is perhaps missing is a full essay on J&K, examining its history, how Sufism was diluted as the prevailing ideology of the Valley people and how financial conduits, drug peddling and creeping Wahabi culture changed the game in favor of the Separatists. It would have been interesting to see Tufail's informed take on Kashmir and what he would recommend for the turn around there.

Overall a good book, for the general reader but a must for those with an orientation towards following Political Islam.

(The reviewer is a retired lieutenant general and former GOC of the Srinagar-based 15 Corps, senior fellow of the Delhi Policy Group and visiting fellow at the Vivekananda International Foundation, Delhi.)

◆◆◆

Upcoming Events

Young Thinkers Meet

6-7 August 2016; Patnitop, Jammu and Kashmir

Young Thinkers Meet is one of the key annual events of India Foundation, which primarily facilitates constructive dialogue between youth and senior functionaries of Government, Bureaucracy, Research Organizations and Civil Society.

National Seminar on Integral Humanism in Indian Thought

8-9 September 2016; New Delhi

The Centre for Study of Religion and Society (CSRS) of India Foundation is organising a two-day National seminar on "Integral Humanism in Indian Thought" on 8-9 September 2016 in New Delhi, to commemorate Birth Centenary of the great Indian philosopher and political thinker Pt. Deendayal Upadhyay.

Papers on the following themes are invited

1. Human ontology and value-pursuits
2. Metaphysical and ethical thoughts in Integral Humanism
3. Quantum Physics and Integral Humanism
4. Society and social harmony and World order in Integral Humanism
5. Arthayam and sustainable development in Integral Humanism
6. Political ideology of Integral Humanism
7. Ancient Indian thought and Integral Humanism
8. Individualism and Integral Humanism
9. Nationalism, Internationalism and Integral Humanism
10. Gender discourse and Integral Humanism

Abstracts may be submitted through email addressed to csrs@indiafoundation.in by July 15, 2016.

Indian Ocean Conference

1-2 September 2016; Singapore

India Foundation is organizing Indian Ocean Conference 2016 on 1-2 September 2016 at Shangri-La Hotel, Singapore. Institute of Policy Studies, Sri Lanka; Bangladesh Institute of International & Strategic Studies (BIISS), Bangladesh; and S. Rajaratnam School of International Studies (RSIS), Singapore will be co-hosts of this event.

The Conference endeavours to convene critical states and principal maritime partners in the Indian Ocean Region to cogitate and deliberate on myriad issues impinging on region-wide national security and national development, through the tri-prism of Geo-Strategic, Geo-Economic and Geo-Cultural, rendering maritime affairs to not merely be a realm of concern for national security planners and the strategic establishment, but to connect with the broad swathe of popular opinion, discourse, consciousness and imagination, across IOR communities and societies.

The conference would be attended by eminent leaders and distinguished delegates from over 15 countries in the Indian Ocean Region.

For further details and registration, please write to Indianocean@indiafoundation.in

Homeland Security 2016 – Smart Border Management

6-7 September, 2016; New Delhi

The eighth edition of the FICCI's Homeland Security programme will be held in partnership with India Foundation on 6-7 September 2016 at FICCI, New Delhi. This year theme is Smart Border Management. The two day conference proposes to bring together experts from Government, Central Armed Police Forces, Indian Navy, Coast Guard, State (Marine) Police and Industry to discuss and debate issues for smart and effective border management in India.

India Economic Convention

23-24 September, 2016; Srinagar, Jammu & Kashmir

India Economic Convention is an annual event with an aim to bring together leaders from the government, business, think-tanks, academia and research organizations as well as global experts to discuss some of the pertinent economic issues, challenges and opportunities for India. This premier annual event provides an ideal platform for exploring the key policy challenges and gathering innovative ideas and suggestions to drive growth, create livelihood opportunities and ensure sustainable development of the country. This programme is being jointly organized by India Foundation, US-India Business Council and FICCI in partnership with Government of Jammu and Kashmir.