

# Multidisciplinary Global Journal of Academic Research (MGJAR)

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## INTERNET MARKETING CHALLENGES OF SOUTH AFRICAN SMES

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### Abstract

*The research intends to establish Internet marketing challenges of South African SMEs. The benefits of Internet marketing seems to be ignored by most SMEs and prevent them market their businesses effectively. The research design chosen for this research was descriptive research in conjunction with a quantitative approach. The sample for the study encompassed of 500 SME owners who currently manage small businesses in South Africa.*

*The results confirmed that SME owners consider "Unauthorised access to sensitive or proprietary information, and limited verification of authorship of messages" as the largest challenge to use Internet marketing. Lack of resources and high start-up costs were indicated that they also experience challenges with funding Internet marketing. Most SME owners are still not convinced that Internet adoption could result in lower operational costs. Inadequate access to technologies; ineffective selling techniques; and limited market research; lack of management support and encouragement; references time and Internet costs were challenges mentioned. The conducted research would recommend display networks, email marketing and social media as marketing tools.*

**Key Words:** South African SMEs, Internet marketing challenges, Internet adoption, Lack of management support.

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### 1 BACKGROUND

In South Africa 91 per cent of business ventures are SMEs, providing employment opportunities to 60 per cent of the labour force and contribute 34 percent to GDP. Despite the significant and importance of SMEs and their contribution to economic growth of South Africa, SMEs are still faced with numerous challenges that inhibit growth (Hussaina, 2010). Apart from SME funding and limited access to finance, the Global Entrepreneurship Monitor (GEM) Reports (2001-2010) noted that South Africa's SMEs owners also suffer from poor marketing skills. South Africa has one of

the highest SMEs failure rates in the world due to these factors (Sowetan, 2013). Ceglie and Dini, (2005) observe that marketing decisions are needed to sustain SMEs. Unfortunately, very little marketing is actually undertaken by SMEs due to the high costs of marketing a business. Although, the limited marketing budgets of SME, they still need to use marketing tools to advertise their products. Hill (2011) and Mutula and Van Brakel (2006) indicate that both domestic and global sales are depending on the targeting of specific groups which usually evolves the use of Internet search engine and display SMEs providing advertising and routing to the sales page or contact details. Wolf (2011) observes that it seems although that most SMEs have access to Internet most still experience challenges to use the Internet.

Nguyen and Barrett (2006) observe that this increase of Internet usage has also impacted upon the barriers to export entry and has provided hope and opportunities to millions of SMEs attempting to enter foreign markets, by allowing them to communicate globally as efficiently as any large business. Egan, Santos & Bloom (2003) observe that there has been an increase of Internet use in corporate environments, but the extent to which it is used by SMEs outnumbered it. SME marketing differs to marketing in the larger organisations and corporations. It is perceived to be more intuitive, innovative, competency based, and operating under financial and human resource/time constraints while making effective use of networking (Carson, Gilmore, Perry & Gronhaug, 2001). The ability to serve niche markets and develop strong relationships with customers has always been a strong point of SMEs. These days they are less effective by internet-enabled businesses of any size (Gilmore, Gallagher & Henry, 2007). Kula and Tatoglu (2003) indicate that SMEs can use the Internet for marketing products and services by providing online quotes, advertising in more markets with less marketing expense, and using email as a marketing tool to enlarge their reach to potential markets.

A SME survey conducted in 2012 shows (World Wide Worx) that about 410 000 SMEs in South Africa have a website. This research also shows that SMEs with a website are far more likely to be highly profitable than those without. However, limited research was conducted on this field and it seems that there is a gap in the literature. This research aims to establish Internet marketing challenges of South African SMEs. The research design chosen for this research is descriptive research in conjunction with a quantitative approach. The population includes SMEs in South Africa. The sample for the study encompasses 500 SME owners who currently manage the SMEs in South Africa.

## **2 LITERATURE REVIEW**

### **GLOBAL SMES INTERNET MARKETING**

Internet marketing usage (Ching & Ellis, 2004; Hoffman, Novak & Chatterjee, 1995; Nguyen & Barrett, 2006) has grown rapidly in relation to the increase in commercial websites. This approach decreases the costs of printing materials such as catalogues and glossy brochures, and delivery mechanisms such as postal services or courier

services. Downie (2012) and Poon and Swatman (2007) have identified motivation drivers such as the opportunity to promote their company better; the chance to lower operating and marketing costs; enrich their overall marketing communications mix and sales funnel effectiveness, and increase sales and profits for SMEs.

A recent study conducted by Friedlein (2014) in Britain shows that 79 per cent of the SME respondents felt it was critical to their marketing to have a website to represent their brand and showcase their products or services. The same study also highlighted the following:

- SME managers and owners are familiar with social media marketing, email marketing and SEO.
- Over 50 per cent manage their digital activities are operated in-house and one-third have some sort of agency support.
- The least familiar online marketing tactics are content marketing, affiliate marketing and inbound marketing.

Summarising the research study findings, Friedlein (2014:21), founder and managing director at Browser Media, remarked:

“It’s heartening to find that SMEs understand that their website can be a valuable business asset but equally concerning that only half invest in promoting it more broadly. It’s a bit like setting up a new retail outlet and then only telling family and friends how to find you. In order to attract new customers and grow their businesses, these SMEs need to think like a big brand and make more noise online.”

### **SME INTERNET USAGE IN SOUTH AFRICA**

South Africa has one of the largest Internet economies in Africa. Research conducted by Goldstuck (2012) shows that South Africa had approximately 8.5 million Internet users at the end of 2011. This represented a 25 per cent increase over the 6.8 million recorded in 2010. This high growth rate is the result of the proliferation of ‘Smartphones’ in the South African market – making Internet available to more people without an ADSL or other physical connection. South African Internet penetration grew to approximately 17 per cent. But it is by no means the biggest percentage of Internet penetration in the African continent. Nigeria, with its 45 million users, has a 29 per cent penetration. Egypt has a user base of 21.6 million users with a 26 per cent penetration, while Morocco’s 15.6 million users represent a 49 per cent penetration. Kenya has an estimated 10.4 million Internet users with a 25 per cent penetration.

### **DEFINING THE SME**

SMEs are defined in different ways, with reference to the number of employees or to turnover bands (as in the National Small Business Act 1996, which also allows for variations according to industry sector). In South Africa, a ‘small business’ is official defined in Section 1 of the National Small Business Act of 1996 as amended by the National Small Business Amendment Acts of 2003 and 2004 (NSB Act) as a separate

and distinct business entity managed by one owner (National Small Business Act of 1996). The NSB Act also categories small businesses in SA into distinct groups, namely; survivalist, micro, very small, small and medium, hence the use of the term “SME” for small and medium enterprises. The typical South African SME has no more than 50 employees.

The promotion and development of SMEs in South Africa is currently the focus of much attention in a wide variety of fields because it is regarded as a major key to economic development and wealth creation, thereby contributing towards social prosperity and upward mobility. The demand for an entrepreneurial - driven economy in South Africa is increasing particularly because of the employment creation benefits it offers. The SME sector is globally regarded as the driving force in economic growth and job creation (Lunsche and Barron, 2010). South African Internet usage and penetration levels compare per population unfavourable to other countries such as Australia and Nigeria. Australia has an Internet penetration of 89 per cent whereas Nigeria ranks as number one in Internet usage in Africa with 94 million of the population of 257 million which use Internet. Of the 54 million South Africans only 26.8 million are active Internet users compared to Egypt with a population of 95 million with a penetration rate of 37 per cent.

### **INTERNET MARKETING ACTIVITIES**

Technology, as Accenture (2013) explains accelerated by the Internet, is transforming industry and commerce. Internet marketing uses the Internet to deliver marketing messages to consumers. It includes email marketing, search engine marketing, social media marketing to create online presence, display advertising, and mobile advertising (Beal, 2014; Ward, 2014) electronic marketing (<http://www.quirk.biz/resources>; 2014) refers to the application of marketing principles and techniques by using the Internet. According to Beal (2014) Internet marketing is the process of marketing SME’s products or services by implementing the Internet. It includes direct response and indirect marketing elements using a range of technologies to help connect SMEs’ businesses to their customers. Internet marketing activities also include creating relevant content on SMEs website; publish articles online; sponsor a local sport team and speak at seminars and write blogs. There are five main issues that the previous studies (Humphrey, 2005; Pearce & Byars, 2012; and UN, 2012) noticed with Internet using search engine and display networks:

- The cost and the difficulty are targeting specific groups according to your sales funnel.
- Understanding and applying keyword search methodology and SEO (Search Engine Optimization) most SME do not have the knowledge or the time to gain this knowledge to apply keyword and SEO successfully.
- Most sites set up by SMEs do not provide adequate customer or consumer experience to ensure high conversion.

- Most SME owners do not understand how to approach Internet marketing and Internet Customer interaction technologies.
- Even SMEs that do have budgets to source out the building of a web site, they usually do not get the service and technology to enable them to fully service both the desktop, tablet and mobile market.

### **INTERNET MARKETING CHALLENGES**

Several studies (Tan, Chong, Lin & Eze, 2010; MacGregor & Vrazalic 2005; Cavaye & van Akkeren, 2009) showed that SMEs are not aware of the financial benefits that could result from using the Internet marketing. Challenges SMEs reported were that the start-up investment costs for Internet adoption were high, and that the return on investment was not clear. A second challenge mentioned is that SME owners did not believe that Internet adoption could result in lower operational costs. Singh, Garg and Deshmukh (2010) identified further challenges constraining SMEs' Internet usage for marketing and sales:

- Inadequate access and understanding of Internet technologies pertaining to web presence, marketing and sales channels,
- Ineffective Internet-related selling techniques, and
- Limited Internet market research.

The generalist nature of managers and employees within SMEs results in limited knowledge about how various computer technologies could contribute to an overall Internet marketing strategy. Previous studies (Dlodlo and Dhurup, 2010; Winthrop, 2012; Barge, 2014) confirm that SMEs perceive the following as Internet marketing challenges:

- Start-up investment costs for Internet is high
- Internet adoption could result in lower operational costs
- Inadequate access to technologies, ineffective selling techniques, and limited market research
- Security of information
- Unauthorised access to sensitive or proprietary information, and limited verification of authorship of messages
- Lack of management support and encouragement
- Resistance to change
- Lack of resources

Dholakia and Kshetri (2004); Johnson, Levine, Smith and Stone (2010:405–413); Poon and Swatman (2009), and Tan, et al. (2010) observe that a lack of managements' long-term vision on Internet marketing and sales opportunities results in inadequate support and encouragement to adopt Internet strategies. Resistance to facing a new learning curve (change) is another challenge to adoption of Internet and social media platforms, tools and strategies (Cavaye & van Akkeren, 1999; Johnson, et al. 2010; MacGregor & Vrazalic, 2005). Despite the high affordability of Internet



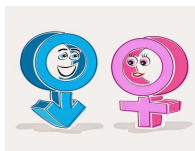
networks, the low time-to- market factor and the low learning-curve in comparison to other Internet tools, it seems some SMEs are still not convinced of the value of the social media component. However, there is strong indication that more SME owners are starting to understand the value of Internet marketing in enhancing productivity and competitiveness (Bakeman & Hanson, 2012:107).

This is perhaps the most important statistic from the SME Survey 2012 is that a high 63 percent of formal SMEs in South Africa have a website, which leaves more than a third of SMEs without an online presence. The question can be asked which are Internet marketing challenges that prevent South African SMEs to use Internet marketing?

### 3 RESEARCH FINDINGS

#### Demographics

#### Describing the South African SMEs



**Male Female**

**Grade10 Matric**

**Degree**

**35.5per cent 64.5per cent 6.5per cent 45.2per cent 48.4per cent**

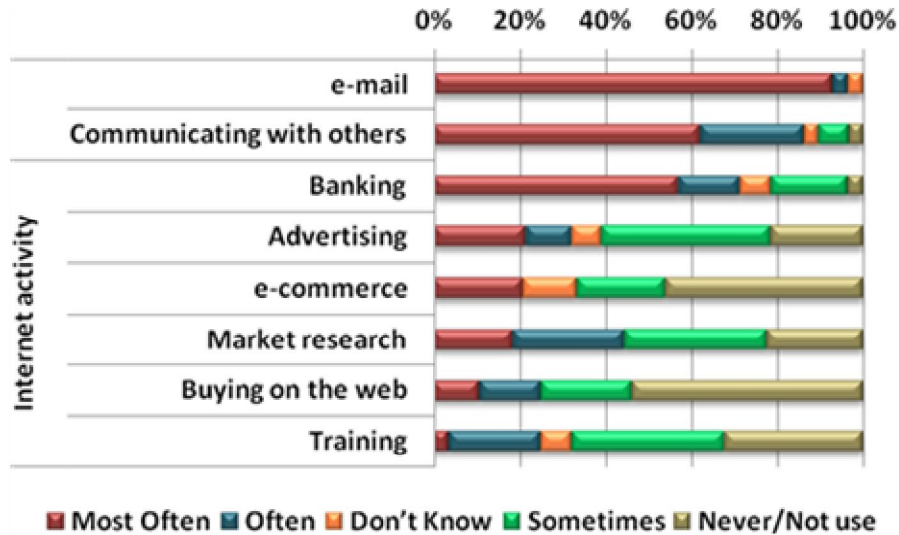
The results reveal that the largest proportion of the respondents was older than 50 years while the rest of the respondents were relatively equally distributed among the other age groups. Almost two thirds (64.5 per cent) of the respondents were male and only 35.5 per cent of the respondents were women which validate the secondary research. Most SME owners in South Africa received good education as only 6.5 per cent) of the respondents had an educational level of less than matric.

The results also show that more than 40 per cent of the respondents have a turnover of less than R50 000, it indicates that the SMEs are small businesses which therefore will not have resources for Internet connectivity as well as limited Internet marketing skills. 18.8 per cent of the respondents have a turnover of R1 million and 20.4 per cent have a turnover of more than a million rand. The Wilcoxon rank sum test indicates that SMEs with a turnover more than R500 000, spent more on Internet activities because they have more resources capability.

The results reveal that the average number of employees is four. Fewer respondents reported large numbers of employees than respondents who reported smaller numbers of employees.

### Internet activities – frequency

The results of Internet marketing, frequency and tools which SMEs are using are shown in Figure 1.

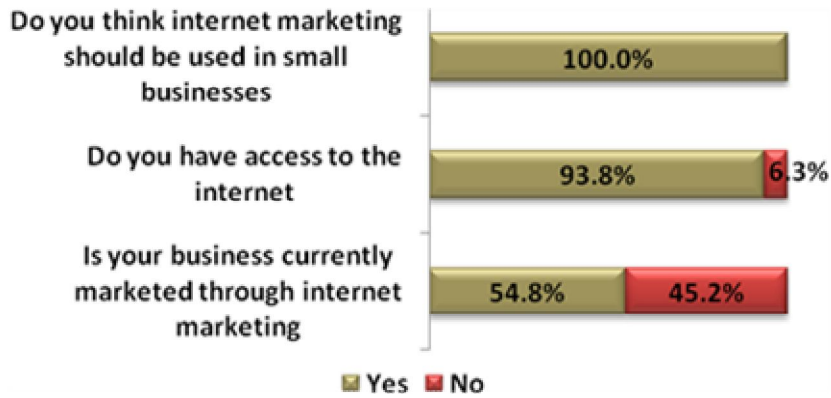


**Figure 1: Internet marketing, frequency and tools**

It is clear from Figure 1 that email is the activity most often used by almost all (92.9 per cent) respondents, followed by communicating with others (62.1 per cent) and banking (57.1 per cent). Email is also the one activity for which none of the respondents reported that they never, or even sometimes, use. Although some respondents also engage in all the other Internet marketing activities most often, the proportions of those who do vary from 3.6 per cent for training to 21.4 per cent for advertising. The proportions of respondents who appear not to know enough of the Internet to know what they are doing are small, while for market research and buying on the web, nobody reported that they did not know. Buying on the web (53.6 per cent) and e-commerce (45.8 per cent) are the marketing activities for which the largest proportions of respondents reported that they never engage in them.

The research aims to establish Internet marketing challenges of South African SMEs. As the secondary research has established internet marketing plays an important role in the survival of SMEs both globally and nationally and can sustain business through internet marketing.

The results are illustrated in figure 2.

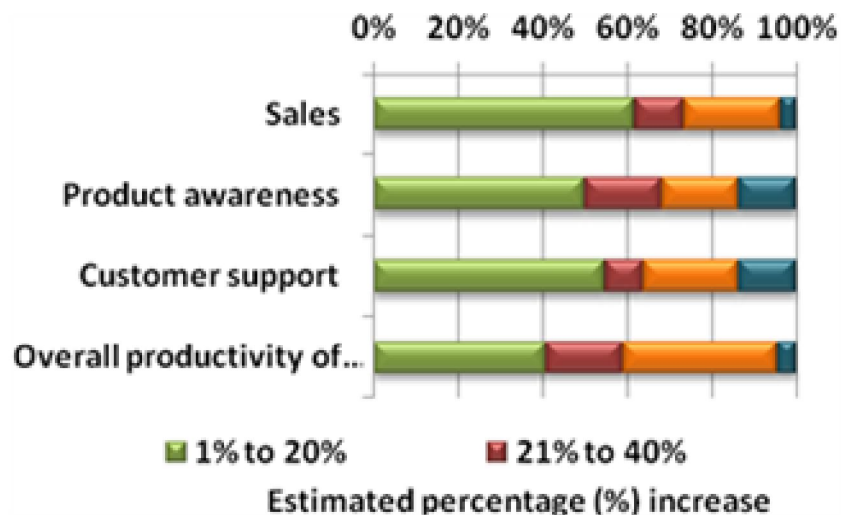


**Figure 2: SA SME internet marketing current usage**

Figure 2 shows that all the respondents think that small businesses should utilize the internet for marketing while just over half (54.8 cent) of the respondents are currently marketed through the internet. Only 6.3 per cent of the respondents do not have access to the internet. Although the results show that most South African SMEs have access to internet only 54.8 per cent of the respondents use internet marketing to promote their businesses. This shows that there is definitely space for improvement.

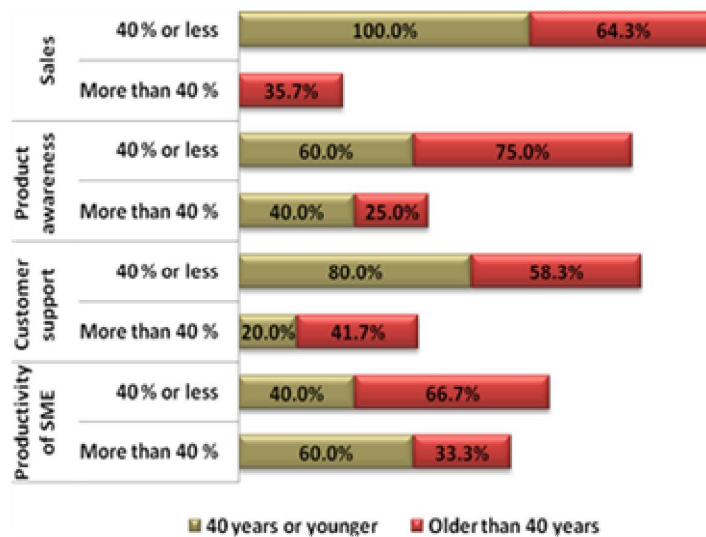
**Increase in business productivity as a result of internet marketing**

The next question was asked to establish whether there was an increase in sales, product awareness, consumer support and overall productivity of the SME as a result of internet marketing communication efforts (figure 3.)



**Figure 3: Increase in business productivity as a result of internet marketing**

Figure 3 give an idea about the increase in business productivity as a result of internet marketing. The respondents report a 1 per cent to 20per cent increase in all four of the listed areas range from 40.9 per cent for overall productivity to 61.5 per cent for sales. Larger proportions of respondents reported a 41per cent to 60per cent increase in all four of the listed areas than those who reported 21 per cent to 40 per cent increase in the four listed areas. Some respondents also reported a 61 per cent and above increase in all four listed areas. These results are indications of the success with which SME’s employ the Internet to market their businesses. The results indicate that business productivity increased as a result of internet marketing usage (figure 4).

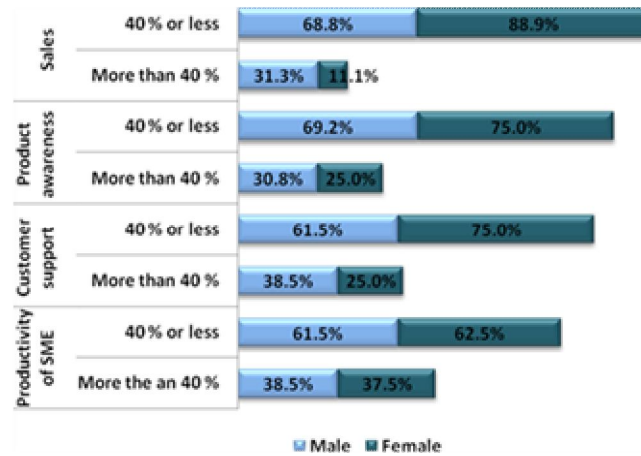


**Figure 4: Increase in business productivity as a result of internet marketing**

Figure 4 illustrates that the respondents report a sales, product awareness, consumer support and overall productivity increase. There seems to be an effect of age on the percentage increase in sales, product awareness, consumer support and overall productivity. In the case of sales and customer support, larger proportions of the respondents that are 40 years or younger reported increases of 40 per cent or less while larger proportions of the respondents older than 40 years reported increases of more than 40 per cent . In the case of product awareness and overall productivity, larger proportions of the respondents older than 40 reported increases of 40 per cent or less while larger proportions of the respondents that are 40 years or younger reported increases of more than 40 per cent .

Thus, on average it seems that older respondents are more successful in stimulating better sales and customer support through their internet marketing communication efforts than younger respondents while younger respondents are more successful in increasing product awareness and overall productivity of their SME than older

respondents. The data is analysed according to gender to indicate, sales awareness, customer support and productivity after internet marketing usage in figure 5.

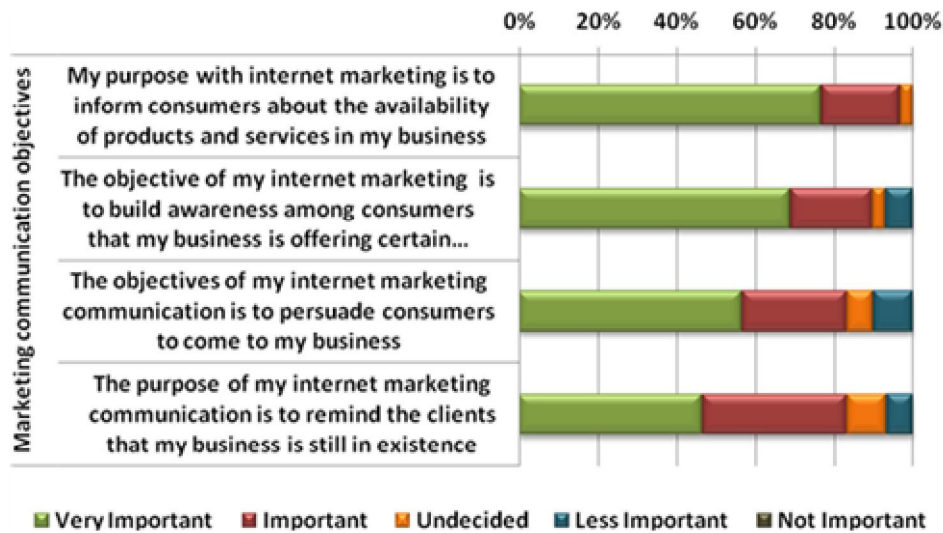


**Figure 5: Increase in business productivity as a result of internet marketing**

Figure 5 shows that on average that female respondents are more successful in increasing sales, product awareness and consumer support with up to 40 per cent due to their internet marketing communications while males seem to be able to effect increases of over 40 per cent in sales, product awareness and consumer support. Both males and females seem to be equally successful to increasing overall productivity of the SME in both the 40 per cent and lower and the over 40 per cent category (figure 5).

**General marketing communication objectives**

General marketing communication objectives were asked in question the next and the results are reflected in figure 6.



**Figure 6: General marketing communication objectives**

Figure 6 refers. Not one of the marketing communication objectives were rated as not important by any of the respondents. In the case of all four of the marketing communication objectives there were a small proportion of respondents who were undecided about their importance. Informing consumers about the availability of products is the most important marketing communication objective, followed by building awareness among consumers about products offered by their businesses.

#### **4 SIGNIFICANCE FOR THE SOUTH AFRICAN SMES**

The significance of this study is that it reveals to the Tshwane SMEs owners the underlying issues surrounding social media and Internet usage. As such, it serves as an indicator of the amount of improvement yet to be effected. Conducted research indicated that social media and Internet are important tools that Tshwane's SMEs can use to improve business sustainability.

#### **5 CONCLUSION**

The research aims to establish Internet marketing challenges of South African SMEs. All the respondents are of the opinion that SME owners should utilize the internet for marketing while just over half of the respondents are currently marketed through the internet. Although the results show that most SMEs have access to internet only 54.8 per cent of the respondents use internet marketing to promote their businesses.

The non-parametric Wilcoxon rank sum test was used to determine whether current Internet marketing has an effect on the overall internet activity levels of the respondents. The Wilcoxon rank sum test revealed a significant difference between respondents who are currently marketing on the internet and those who don't,  $z = -2.288$ ,  $p < .05$ . Respondents who currently market on the internet (M rank=18.03) exhibits a higher internet activity level than that of respondents who do not currently market on the internet (M rank=10.71). Therefore, the results shows respondents currently using the Internet for marketing shows a higher activity of their business activities.

The respondents reported an increase in sales; product awareness; customer support and overall productivity of the business as a result of internet marketing. There seems to be an effect of age on the percentage increase in sales, product awareness, consumer support and overall productivity. In the case of sales and customer support, larger proportions of the respondents that are 40 years or younger reported increases of 40 per cent or less while larger proportions of the respondents older than 40 years reported increases of more than 40 per cent. In the case of product awareness and overall productivity, larger proportions of the respondents older than 40 reported increases of 40 per cent or less while larger proportions of the respondents that are 40 years or younger reported increases of more than 40 per cent.

The results also revealed that older respondents are more successful in stimulating better sales and customer support through their internet marketing communication efforts than younger respondents while younger respondents are more successful in increasing product awareness and overall productivity of their SME than older respondents.

The results also shows that on average those female respondents are more successful in increasing sales, product awareness and consumer support. It seems that, on average, educational level has an effect on how successful the respondents are to increase their sales, product awareness, consumer support and overall productivity through their Internet marketing communications. More than half of the respondents do have a website for their SME business.

The most important motivating reasons to use Internet marketing was the possibility to have 24 hour accessibility and the possibility to provide more up-to-date information, followed by the possibility of providing clients with information more quickly.

The results reveal that the marketing communication element that is used at the highest rate is creating awareness for their product or service, followed by attracting clients to their business through personal selling and relying on word of mouth promotion (social media tools). The marketing communication element that is used least often is using sales promotion to increase their business revenue and using the Internet. The two Internet marketing activities that are used by all respondents at various rates are personal selling and word of mouth promotion.

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## DR. BHIMRAO RAMJI AMBEDKAR'S CONTRIBUTION TO INDIAN ECONOMY

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### Abstract

*Bharat Rathna Dr. Bhimrao Ramji Ambedkar was the most outstanding intellectual of India in 20th Century. Dr. B. R. Ambedkar was also known as Babasaheb. He is the most illustrious son of India. Dr. B. R. Ambedkar was a social reformer and a person who had fought for untouchables in India. Also, he is great scholar who made outstand contribution to economics, sociology, legal luminary, education, journalism, Parliament along with social reformer and human rights. Well known about Dr. B.R Ambedkar was fighting against only about the caste system in India, But unknown fact is that Dr. B.R Ambedkar had also Impacted the Indian Economy. Dr. B.R Ambedkar was basically an economist. He Studied Politics and Economics in Bombay University, MA Economics, PhD Economics in Columbia University and D. Sc Economics at London school of Economics. He gave the strong economic base to India by various dimensions. The study, based on secondary sources and the study is Descriptive in nature. The study enlightens the economic contribution by Dr. B.R. Ambedkar in India, like Labor Problems, Caste Economy, Agriculture and Land Reforms, India's currency problem, Taxation policy, Nationalism of industries, Hindu economy etc.*

**Key Words:** Dr.B.R.Ambedkar, Indian Economy, Financial Economics, Agricultural Economics, Economics of Caste, Economics of Socialism.

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## Introduction

Dr.B.R. Ambedkar (1891- 1956) was a versatile personality. He was the architect of the Indian constitution, a custodian of social justice and a champion of socialism and state planning. Almost all the social and political questions which dr. Ambedkar discussed had an economic dimension. Some of the economic problems he studied include the agrarian reforms of the Indian economy in the context of small holdings and their remedies, the problems of the Indian currency, the education of provincial finance in India and the problem of planning and state socialism.

Ambedkar's economic writings included "ancient Indian Commerce"(A thesis submitted to the Columbia university for the award of master of arts degree in 1915). "National dividend of India: Historical and Analytical study (a thesis for which he was awarded PhD Degree in economics) by the Columbia university in 1916. A revised version of his PhD. Thesis was published as "the Evolution of provincial finance in British India. A Study of "the provincial decentralization of imperial finance". Ambedkar's thesis on "provincial decentralization of imperial finance in British India" was accepted for the M.Sc Degree in 1921. And hid thesis " the Problem of the rupee" was accepted for the award of the D.Sc Degree by the London School of Economics in 1923.

Hence this study enlightens the main economic contribution of Dr. Ambedkar.

## Research Methodology

The Study is Descriptive in Nature. Also the study based on secondary sources that is Published and unpublished sources, Like Articles, Journals, Books about Dr. B. R. Ambedkar's Contribution.

## Dr. B. R. Ambedkar's Main Contribution to Economics

The main economic contribution of Dr. B. R. Ambedkar may be divided into four broad areas:

- Ø Financial Economics
- Ø Agricultural Economics
- Ø Economics of Caste, and
- Ø Economics of Socialism

## Financial Economics

Many of the work done by Ambedkar during his stay abroad mostly during the period 1913- 1923, was in the field of financial Economics. He made a pioneering the study of evolution of provincial finance in British India. It studied mainly the provincial decentralization of impact of imperial finance.

According to Dr. Ambedkar, "the inadequacy of imperial finance was mainly due to an unsound fiscal policy. The government depend heavily on a few taxes such

as land tax, customs and salt tax which affected the agriculture, trade and industry and the poor respectively.” Under the injuries revenue system of the imperial government, the taxing capacity of people decayed so that notwithstanding the numerous resources from which it derived the revenue, the imperial government was unable to make both ends meet”. In addition to this, there were internal charges on war debts. In short, as Dr. Ambedkar put it , “ the bulk of the money raised by injurious taxes were spent in unproductive ways”. And education formed no part of the expenditure incurred, and useful public works were lamentably few.

To remedy the serious defects of the imperial finance, a full federal system was advocated by some officials. Richard Strachey was notable among them. But the idea was opposed by some. Instead, a new arrangement was made under which the revenues and charges remained imperial in their status, but their management was provincialized. Ambedkar refers to the systems “Imperial finance without imperial management.” This, in brief, was the origin of the scheme of provincial budgets.

*Dr. Ambedkar divided the evolution of provisional finance into three stages*

- Ø Budget by Assignments (1871-72 to 1876-77)
- Ø Budget by Assigned Revenues (1877-78 to 1881-82)
- Ø Budget by Shared Revenue (1882-83 to 1920- 21)

### **Budget by Assignments (1871-72 to 1876-77)**

Under the system of budget by assignments, assignment of funds from the imperial treasury was adopted as a method of supply to balance the provincial budgets. So Dr. Ambedkar called it “Budget by assignments”. While commenting on the system, Ambedkar said the assignment made to the provincial government for the year 1871-72 had been declared to be fixed and recurring”. Recurring they were, fixed they were not: for, every year since the start, the government of India kept on adding to and withdrawing from provincial budget, items of charges already incorporated in them. In these modifications in the incorporated charges, the imperial assignments had to be either reduced or augmented as necessity dictated”.

### **Budget by assigned revenues (1877- 78 to 1881-82)**

Under the system, in place of fixed assignment, the provinces were given certain sources by revenue. The yield depended upon good management. The scheme provided elastic source of revenue. It provided provision to meet the growing needs of the provincial services. This was another stage in the evolution of provincial finance. Because of its distinct mode of supply adopted, Ambedkar called this stage as “Budget by assigned revenue”. According to him, under the new provision, “the deterrent effect of a deficit to bear and the stimulating effect of a gain to reap made the mechanism of provincial finance as perfect as it could be made from the standpoint of economy in expenditure and productiveness in resources.

### **Budget by Shared Revenue (1882- 83 to 1920-21)**

Under the earlier system, the budget was grouped under two distinct categories: wholly imperial and wholly provincial. The new provision carved out a third category of account to be made of jointly imperial and provincial. Ambedkar described the system as “budget by shared revenue”. The principal of shared revenue was marked by constant revision at short durations. A great merit of the new system was that in the year 1881-82 settlement, it was made a definite rule that they shall be quinquennial in duration; this is, they shall not be subject to revision before the end of the fifth year from their commencement. The settlement was made quasi-permanent in 1904, and permanent in 1912 and it was there till 1921. And from April 1, 1924, provincial finance in British India entered a new phase.

### **The Problem of the Rupee**

Dr. Ambedkar’s work, “the problem of the rupee: Its origin and its solution,” Ambedkar expressed the view that at the close of the Moghul Empire, India, judged by the standards of the time, was economically an advanced country. He found that India had a large trade, well developed banking institutions. Credit played an important role in business transactions. India enjoyed large balance of payments surplus. Later on, the management of Indian currency and foreign exchange at the hands of the British authorities became highly irresponsible and the performance was disappointing.

The Fowler Committee recommended gold exchange standard for India in the place of gold standard. Dr. Ambedkar was totally opposed to the recommendation. As he put it, “while some people regard that reports as classical for its wisdom, I regard it as classical for its nonsense”. But John Maynard Keynes supported gold exchange standard. Dr. Ambedkar entered into a major debate with him. In his own words, “our differences proceed from the fundamental fact which seems to be quite overlooked by Professor Keynes that nothing will stabilize the rupee unless we stabilize its general purchasing power. That exchange standard does not do. That standard concerns itself only with symptoms and does not go to the disease, indeed, on my showing if anything, it aggravates the disease.

Ambedkar had expressed concern at the decline in the external value of the rupee from 21.63 pence in 1875-76 to 16.73 pence in 1891-92.

### **Agricultural Economics**

In 1918 Dr. Ambedkar published a paper “small holdings in India and their remedies”. Citing Adam Smith’s “wealth of nations” he made a fine distinction between “consolidation of holdings” and “enlargement of holdings: To him, “consolidation of holdings” was a practical problem whereas “enlargement of holdings” was theoretical problem. The latter demanded a discussion of the principles which governed the size of a farm.

In any discussion on the size of land holdings, the concept of “economic holding” becomes important. He was very critical of the then existing notion of economic holding which equated a large holding with an economic holding. As he put it, “it is believed that a large holding is somehow an economic holding. It may be said that even Prof. Jevons has fallen a victim to this notion”. He criticized of small and scattered holdings in the Baroda state in 1917. In this sharp criticism of the report, he said that, “The case with the Baroda committee is much worse. Prof. Jevons at least sticks to one definition of an ideal economic holding, but report of the Baroda Committee Suffers from a plurality of definitions.

The definitions of an ideal economic holding, including the one given by Prof. Jevons, view it from the standpoint of consumption rather than production. According to Ambedkar, ‘In this lies their error’ for consumption is not the correct standard by which to judge the economic character of a holding. It would be perverse accounting to condemn a farm as not paying because its total output does not supported the family of the farmer through as a pro- rate return for each of its investments, it is the highest.”

Ambedkar’s significant contribution to agriculture economics lies in his suggestion that input output relationship should be true economic test. He had, in his mind, factor proportions and their ideal combination. He believed that industrialization would have a beneficial effect upon agricultural development. He was worried about the rise in the proportion of India’s rural population from 64.4% in 1891 to 67.5% in 1901 and 71.5% in 1911.

To Ambedkar, the evil of small holdings in India was not fundamental, but was derived from the parent evil of the maladjustment in her social economy. He observed that population pressure was the chief cause of subdivision and fragmentation of landholdings. The absence of alternative source of income is another cause of subdivision of holdings these things put a premium on small pieces of land. His remedy to the problem is to transfer the idle labor in agriculture sector to non-agricultural channels of production. In his own words, “this will in one stroke lessen the pressure and destroy the premium that at present weights heavily on land in India”. One can see in these traces of some of the popular remedies suggested to solve the problem of what came to be known as “disguised unemployment” in 1950’s. Ambedkar also believed that “Industrialization must precede consolidation. It should never be forgotten that unless we have constructed an effectiveness barrier against the future sub-division and fragmentation of a consolidate holding, it is idle to lay out plans for consolidation. Such a barrier can only found in industrialization, for it alone can reduce the extreme pressure which causes sub-division of land.

### **Economics of Caste**

According to Dr. B.R. Ambedkar, the concept of “ Chaturvarna” (division of Hindu Society into four categories: Brahmin, Kshatriya, Vaisya and Shudra) will fail because the original four castes had multiple dint more than 4000 castes. It makes the whole concept of division of labor ridiculous. While he agreed that civilized society

needed some kind of division of labor, he asserted that in no civilized society should it degenerate into a division of labors on the basis of hierarchy and water tight compartments. He believed that the caste system based on birth, and on the social status of parents, would not improve social individual are social efficiency. And it would not also allow the individual to develop his capacities to an optimum level.

The schedule castes people were the worst sufferers of the evil of caste system. They were considered as “untouchable classes” in the past. And they were socially, educationally, and economically backward. They were known by different names: “Harijans” (A term coined by Narasinha Mehta and popularized by Mahatma Gandhi), “exterior castes”, “depressed classes”. “Chandalas” and “Panchamas”(The Fifth Class). The person who belonged to these castes suffered from many social and economic disabilities.

When the term “depressed classes” was introduced, at the time it was considered superior to the term “untouchables”. But Dr. Ambedkar, considered the term degrading and contemptuous. In response to representation made by Dr. Ambedkar, the name was changed to schedule castes by the British Government. But Mahatma Gandhi has preferred to call them “Harijans” Meaning, “the children of God”.]

Dr. Ambedkar believed that caste was an obstacle to social mobility. It resulted in social stratification. He was of the firm view that individuals must be free to change, their occupations. Moreover, the caste system caused social tensions.

In an undelivered speech, which he wrote in 1936, he said. “Unless you change your social order, you can achieve little by way of progress. You cannot mobilize the community either for defence or for offence. You cannot build anything on the foundation of castes. You cannot build up a nation, you cannot build up morality. Anything that you built up on the foundation of caste will crack and will never be whole.”

Dr. Ambedkar felt that money alone did not go to determine the social status of a person in our society. Caste and heredity played a dominant role in determining the social status. Those who do menial jobs (e.g. scavenging) might still be looked down, notwithstanding increase in their money wages. It may be noted that scavengers occupied the lowest status even the so called “untouchables” in the past. Dr.Ambedkar pointed out that many poor Brahmins enjoy better social status that relatively rich shudras.

The caste system has resulted in the absence of social democracy in India as distinct from political democracy. Dr. Ambedkar, in his final address to the constitution assembly said. “in the social plane we have in India a society based on the principles of graded inequality which means elevation of some and degradation of others. On the economic plane, we have a society in which there are some who have immense wealth, as against many who live in abject poverty. On the 26<sup>th</sup> January

1950, we are going to enter into life of contradictions. In politics, we will have equality and in social and economic life, we have inequality. In politics, we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall by reason of our social and economic structure, continue to deny the principle of one man one value. If we continue to deny it for long, we will do so on only by putting our political democracy to peril.”

### **Economics of Socialism**

Dr. Ambedkar was a socialist. He was champion of state socialism. He advocated the nationalization of all key industries and suggested state ownership of land and collective farming. He was for state monopoly of insurance business. Not only that, he advocated compulsory insurance for every citizen.

Ambedkar’s idea of state socialism is based on a unique political’ philosophy which is a unique blend of Marxism and Bhudhism. He admits that “Comparison between Karl Marx and Buddha may be regarded as a Joke”. The Marxist may laugh at the idea of treating Marx and Buddha together because to them Marx is so modern and Buddha is so ancient.

According to Ambedkar, “Karl Marx no doubt the father of modern socialism and communism but he was not interested mainly in propounding the theory of socialism, that had been done long before him by others. Marx was more interested in proving that his socialism was scientific. His crusade was much against the capitalist as it was against those whom he called the utopian socialists. He dislike them both. It is necessary to note this point because Marx attached greatest importance to the scientific character of his socialism. All the doctrines which Marx propounded had no other purpose than to establish his connection that his brand of socialism was scientific and not Utopian.

By Scientific socialism, what Karl Marx meant was that his brand of socialism was inevitable and inescapable and society was moving towards it and that nothing could prevent its march. It is to prove this contention of his that Marx Principally labored”.

Ambedkar was not a blind follow of Marx. In fact, he questioned the very (economic) basis of class conflict and thoughts it was irrelevant to the Indian situation. And he did not consider the economic interpretation of history as the only interpretation. Furthermore, he did not accept that the proletariat had been progressively pauperized. And he did not believe in the Marxian claim that socialism was inevitable.

According to Ambedkar, what remains of Karl Marx is a “residue of fire”, small but still important.” He gave the residue in the following four propositions:

- Ø The function of philosophy is to reconstruct the world and not to waste its time in explaining the origin of the world.



- ∅ There is conflict of interest between classes and classes.
- ∅ Private ownership of property brings power to one class and sorrow to another through exploitation.
- ∅ It is necessary for the good of the society that the sorrow be removed by the abolition of private property.

Taking the above points from the Marxian creed, Ambedkar made a comparison between Buddha and Karl Marx and brought the similarities and differences between Buddha and Marx. He concluded by saying that "the differences are about the means. The end is common to both." The means adopted by Buddha were to convert a man by changing his moral disposition to follow the path voluntarily. The means adopted by the communists are equally clear, short and swift. They are (i) Violence and (ii) Dictatorship of the proletariat.

Dr. Ambedkar advocated the establishment of state socialism with parliamentary democracy and without dictatorship. He wanted "to retain Parliamentary democracy and to prescribe state socialism by the law of the Constitution so that it will be beyond the reach of a parliamentary majority to suspend, amend or abrogate it. It is only by this that one can achieve the triple object, namely to establish socialism, retain parliamentary Democracy and avoid Dictatorship

### **Conclusion**

There is no doubt Dr. Ambedkar was a great economist. But his academic work as an economist was eclipsed by his contributions in the field of law and politics. Above all, he was also great social reformer. All his contribution to Indian economy that is very intellectual in current Indian economy also. That's why noble price winner Professor Amertyasen said " Dr. B.R Ambedkar is my father in Economics he is true celebrated champion of the underprivileged. He deserves more than what he has achieved today. However he was highly controversial figure in his home country, though it was the not reality. His contribution in the field of economics is marvelous and will remembered forever.

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## VICTIMS OF HONOUR KILLING IN TAMILNADU (INDIA) - A CRITICAL ANALYSIS

*"A shameful act on the name of false prestige!"*

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### Abstract

*The practice of "killing" young boys and girls who defy the norms to preserve the "honour" of a community or a society has been prevalent all over the world. The causes, modus operandi and the response of the criminal justice system may vary from country to country.*

*In India honour killing takes place to preserve the honour of a particular caste or a family. The perpetrators may be different from place to place. In Northern parts of India, honour killings of young ones who defy the social order are done at the dictat of the 'Khap Panchayat'(Caste Assembly), which is nothing but a kangaroo court conducted by the dominant caste leaders of that particular community. In Southern India, a family supported by its caste groups, based on the deep rooted twin orthodoxies i.e. patriarchy and caste often commits such crimes.*

*This paper attempts to study the outcome of analysis of the cases of honour killing in Tamil Nadu. Honour Killings are not separately codified as offences under the penal laws in India and hence there are no official statistics available on the incidence of honour killing. The researcher was successfully able to get certain data on the honour killings based on the police records. Based on the data the caste equation, the socio economic background of the victims and the offenders, the caste politics behind the crime, the role of the state, police, judiciary, and then on-state players have been analysed. The analysis revealed that the perpetrators belong to dominant castes, that*

*mostly the women are the sufferer and also the victim at the end of the day and the method of killings are always brutal and vehement. The agencies of criminal justice system, do not recognize honour killings, but simply register the cases either as a murder or as a suicide. The findings revealed that the prosecution of offenders is difficult since the perpetrators are the members of the family and strongly supported by the community.*

**Key Words:** Caste System, Honour Killing.

## INTRODUCTION

The Right to Life is a guaranteed as the fundamental right under the Constitution of India. It is argued by some that this right cannot be deprived even to a person who commits a gruesome offence. Majority countries in the world have done away with the Capital punishment (death penalty) on the view that it is an anathema to the civilised society.<sup>1</sup> However in some societies the lives of young girls and boys are taken away not for committing any crime under the penal codes but for committing the “crime” of love, only because it shakes the deep rooted caste system and allegedly bring dishonour to their family and violates the code of honour adopted by that community.

It is estimated by the United Nations Population Fund that as many as 5000 women and girls get murdered by their family members around the world year after year by way of “honour killings”. According to the Human Rights Commission of Pakistan, more than 1000 women become victims of such crimes in Pakistan since 1999. According to the United Nations special rapporteur the extra-judicial, summary and arbitrary executions called as the “honour killings” are reported from countries such as Bangladesh, Brazil, Ecuador, Egypt, India, Israel, Italy, Jordan, Morocco, Pakistan, Sweden, Turkey, Uganda and the United Kingdom. In India, annually more than 1000 such reported crimes were perpetrated. Actual crimes may be more. These killings are executed normally in cases of inter-caste marriages or same Gotra (clan) marriages, preventing or terminating an arranged marriage or defying the social codes established by the patriarchal society<sup>2</sup>.

In northern parts of India, these honour killings are instigated openly or in an indirect manner by the Khap Panchayats consisting usually of dominant caste leaders and landowners<sup>3</sup>. This body is not an elected panchayat but a self- appointed one and

<sup>1</sup>Sunil Batra Etc. v Delhi Administration and Ors Etc. dated on 30/8/1978; Bachan Singh Etc. Etc. v State of Punjab Etc. Etc. dated on 16/8/1982 and Rajendra Prasad Etc. Etc. v State of Uttar Pradesh dated on 9/2/1979

<sup>2</sup>BBC, “Honour Crimes”, available at <http://www.bbc.co.uk/ethics/honourcrimes/>

<sup>3</sup>Manbir Bhinder, “Khap panchayats: Adjusting Cultural Dishonour?”, available at [http://www.legalservicesindia.com/article/print.php?art\\_id=1610](http://www.legalservicesindia.com/article/print.php?art_id=1610)

it exercises a complete control over individuals more so on the women of their own community.<sup>4</sup>

Of late, number of such honour killings gets reported in public and at times reach the law enforcement machinery. In the three tier appeal system existing in the criminal justices system some cases have also reached the highest court in India i.e. the Supreme Court. In one such case, the Supreme Court came down heavily upon the perpetrators of violence in the name of honour killing and issued directives to the law enforcing authorities to view such matter strictly and bring the culprit to order. The court hope that is the only method by which the pernicious practice can be put down. It observed:<sup>5</sup>

*"This case reveals a shocking state of affairs. There is no dispute that the petitioner is a major and was at all relevant times a major. Hence she is free to marry anyone she likes or live with anyone she likes. There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law. Hence, we cannot see what offence was committed by the petitioner, her husband or her husband's relatives.*

*Since several such instances are coming to our knowledge of harassment, threats and violence against young men and women who marry outside their caste, we feel it necessary to make some general comments on the matter. The nation is passing through a crucial transitional period in our history, and this Court cannot remain silent in matters of great public concern, such as the present one.*

*The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage.*

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<sup>4</sup>SahilMakkar, "Panchayats under the shadow of the 'Khaps'", available at <http://www.livemint.com/Politics/nW03eT80k8lmHDfAUGh33J/Panchayats-under-the-shadow-of-the-khaps.html>

<sup>5</sup>"Supreme Court Reports" [2010] 6 S.C.R. , available at , [http://supremecourt.gov.in/pdf/SupremeCourtReport/2010\\_v%206\\_pii.pdf](http://supremecourt.gov.in/pdf/SupremeCourtReport/2010_v%206_pii.pdf)

*We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism"*

## **CASTE SYSTEM IN INDIA**

The institutional structures which governed social conduct in the society are subsumed under the nomenclature of 'Caste System', which broadly represents a vertical judgment of social division of the Hindu population into four major groups known as 'Varnas'. At the top of this arrangement are the Brahmans (priestly class) followed by 'Kshatriya' (the warrior class), and 'Vaishya' (trading and artisan class) and finally 'Shudra' (labouring and service class) stood at the bottom of hierarchy. The 'untouchables' were not a part of this Scheme. However, over a period of time, the exigencies of situation led to the addition of fifth group to this classification which was not given any 'caste status' as such, but nonetheless integrally linked to the social order and is referred to as 'untouchables' or 'outcasts'. The membership of this group was determined by birth and could not change by individual effort or social acceptance. These four 'Varnas' subsequently transformed and got divided into hundreds of sub-castes, known as 'jati', each 'jati' having its own norms of social conduct<sup>6</sup>.

The segmentation of society into four groups represents a tightly divided arrangement, of both status and occupation which is linked to each other in a hierarchical relationship. 'Brahmins' occupy the top slot in the hierarchical ladder and 'untouchables', the bottom. As the caste hierarchy manoeuvres around the concepts of 'purity' and 'pollution', 'untouchables' are considered as the most degraded because they perform polluting tasks and usually they are assigned with the jobs like cleaning drainages, clearing the garbage, and servants and house maids. The restrictions on feeding and social intercourse incorporates code of conduct for each caste on what one can see and cannot see, what one can and cannot touch and what can or cannot be accepted by a person of one person from another caste. Restrictions on occupation are intended to prevent any destabilization hierarchy. Civil and religious disabilities mandate 'untouchables' to live at a distance from the main village, not to draw water from village well, not to enter the village temple, not to wear the sacred thread, not to acquire education or recite the religious text. Untouchables are required to undertake the most polluting and degrading occupations, such as cleaning filth, including human excreta, flaying dead animals, digging graves etc. The absolute restriction on marriages outside the caste and, in fact, even sub-castes ensures that there is no mobility from one group to another. Thus, the untouchables face total segregation in all matters, subjected to acute discrimination, do the most menial and degrading jobs and have no right to

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<sup>6</sup>[http://shodhganga.inflibnet.ac.in/bitstream/10603/123920/10/10\\_chapter%205.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/123920/10/10_chapter%205.pdf)

change their status. This situation continued for centuries. The persons of suppressed communities acquiesced in this arrangement, as there was no option for them to escape from it. But even in the British period caste distinctions remained relevant in matters relating to Hindu Law. The general features of the legal system did not change the status of lower castes, as the overall British policy remained one of non-interference. In matters such as entry to temples, ritual pollution and rights to exclusiveness especially in education and job opportunities, the judiciary supported the customary laws of Hindus and their view was upheld even at the level of Privy Council. Regarding the idea on the Education and Job opportunity, they were equally placed in the school as well in working place without any caste discriminations.<sup>7</sup> There was, however, some differences in the attitude of Courts towards secular public facilities such as streets and roads where such disabilities were not enforced. However, the Courts did not provide any support for removing caste disability in matters which came up before their consideration.

However, the British Government never took positive action to improve the condition of shudras and untouchables and to remove their disabilities. Apparently, the larger consideration of consolidating their rule prevented them from interfering with the customary practice associated with indigenous religions. Thus, at the time of Independence, the traditional status of untouchables and caste disabilities, which prevented them from leading a life of dignity and self-respect continued to prevail. It was therefore, left to the Constitution of India after independence to make the first comprehensive break with the past and to pronounce the policy of abolition of untouchability and declare total equality for the Shudras and untouchables in Indian society

## **RESEARCH OBJECTIVES**

- To find out the caste equation in such honour killings.
- To analyse who are the perpetrators and who are the victims,
- To study the socio economic background of the victims and the offenders and also the politics behind the crime,
- To understand the role of the state, police, judiciary, the non-state players in the trend of Honour killing.

## **RESEARCH METHODOLOGY**

This study and research involves the collection of primary datas which involves oral interviews with the victims and N.G.Os. The researcher also interviewed other two organisations who deal with honour killings namely All India

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<sup>7</sup>“*Theoretical framework and review of related literature*”, available at [http://shodhganga.inflibnet.ac.in/bitstream/10603/123920/10/10\\_chapter%205.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/123920/10/10_chapter%205.pdf)

Democratic Women's Association (AIDWA) and Tamil Nadu Untouchability Eradication Front (TNUEF) and some of the victims. These primary datas would be helpful in analysing the real trauma faced by the victims in marrying her lover and living a happy life and what are the hindrances that make them to linger for marrying and loving the other caste person. It would be also helpful in concluding on the hardship and challenges faced by the people because of caste.

The secondary sources involves collection of necessary materials from authenticated books, online articles, journals, newspaper and various other materials. This would be helpful in understanding the concept of honour killing and its consequences and other relevant points.

## **NEED FOR THE RESEARCH**

Around the world, Honour Crimes happen if women over step what is declared as appropriate for them. Through these activities, they are bringing shame or honour to the family. Religion and patriarchy declare that the purity of the religion depends on women. The crime is kind of a feticide. There is no separate penal provision in India. Caste-Patriarchy-Politics are the reasons for such a crime that are still prevailing. Most of the honour crimes happens in Northern India especially by the Khap Panchayats or otherwise were exposed through media and brought to the lime light. But Honour crimes in States like Tamil Nadu, the dimensions are different. In Tamil Nadu, if a girl belonging to a dominant caste falls in love or marries a scheduled caste boy, it stands as the biggest dignity loss for the upper caste because they have the mentality that it is not the Honour to marry the Schedule caste people so it results in the honour killing. The Chief Minister of Tamil Nadu who heads the legislature categorically stated that there is no honour crimes in Tamil Nadu on the floor of the Legislative Assembly of Tamil Nadu. Under such circumstances, it is essential to conduct a study of these kind when a crime itself is refused to be recognised.

## **BACKGROUND OF THE STUDY**

A study conducted by the research team of Manonmaniam Sundaranar University in Tirunelveli District of south Tamil Nadu found that honour killing was prevalent in ancient Tamil Nadu where women were killed and then christened as deities and there are more than 600 such deities. At the same time Tamil Nadu which has a tradition of supporting inter-caste and reform marriages felt the ugly presence of honour killing since 2008.

Every year the case of honour killing is marked as the notable issue in the newspaper and other resources, where the issue that commonly arise is that the upper caste boy/ girl loved and married the lower caste (Schedule Caste) boy/ girl because of which the upper caste people, murdered both of them is used to be the trend of this Honour Killing. One such example of the recent case is that a graduate in Chemical Engineering Murugesan(25), a Dalit and a commerce graduate Kannaki

(22), a caste Hindu got married at Cuddalore, a town 200 km away from Chennai. Their marriage was duly registered. When the girl's parents came to know of the marriage, the couple were abducted and tortured. Both of them were forced to drink poison in the presence of scores of people who remained as mute spectators and then their bodies were burnt leaving no trace.

### **TAMIL NADU'S CASTE RIVALRY AND HONOUR KILLINGS: A TIME TO LOVE AND A TIME TO DIE - CHRONICLES OF DEATH FORETOLD**

This chapter broadly discusses on the murder and gruesome cases because of the prevalent case mythology that leads the people to kill because of "Honour and Dignity of the caste".

- A Dalit by name Gopalakrishnan of 20 years was murdered in a gruesome manner (head beheaded) by Durga's parents (caste Hindu) since both loved each other. (Cr.No.328/2012 of Thirumuttam P.S) for offences u/s 342, 364, 302 IPC and 3 (2) (5) of SC & ST Act).
- Thiruselvi (17) (Caste Hindu) fell in love with Danielraj (a dalit). When Thiruselvi's family came to know of her love affair, they tortured her continuously and tried to fix her marriage with some other person. Thiruselvi had left her house. The family members of Thiruselvi lured the lovers under the false promise of marriage and bet them black and blue. Later Danielraj was released. But Thiruselvi who was taken to home by her mother and grandmother died after a few days. They claimed that she died due to chicken pox and also buried her body in their own land. A case was registered in Cr.No.90/2008 u/s 174 Cr.P.C. Nearly after 3 years and 10 months, the police arrested the mother and grandmother for offences u/s 302 and 201 I.P.C. on the basis of the final report of post- mortem which had confirmed that Thiruselvi was murdered and did not die of any disease.
- Lakshmi, a caste Hindu of Thiruvarur District loved Sivaji, a Dalit. Despite strong opposition from Lakshmi's family, both eloped, got married and started their marital life in Nilakottai. They were constantly under threats from Lakshmi's brothers. On 07.09.2008, Sivaji was kidnapped and murdered at Thanjavur. They also attempted to kill Lakshmi and her child too. Lakshmi escaped and is now living with the parents of Sivaji.
- Bathrakali (25) a Dalit fell in love with Sripriya, a caste Hindu and both got married. Enraged by this, Sripriya's father and relatives barged into her house and murdered her on 04.11.2009. The accused were arrested and the case is pending in the Court.
- Daniel Selvakumar a DaitChennai, married Sadhura, a caste Hindu girl. The relatives of Sadhura murdered her on 23.03.2009 by pouring poison into her ears. Daniel Selvakumar is prosecuting them.



- Durai (21) of Thiruvannamalai District, who belonged to ST community was murdered since he loved Thenmozhi, a caste Hindu. The girl's brother and uncle fatally assaulted Durai with Arival, packed him in a gunny bag and threw it in a bush on 01.09.2011. His body was recovered only after a month. The accused were arrested only after 6 months, namely on 17.03.2012 and the case in Cr.No.627/2011 was altered to 302 & 201 IPC and also to that of SC & ST Act.
- A caste panchayat in Nagai District declared a love affair between Madhavan (a Dalit) and Chitra (Caste Hindu) as illegitimate intimacy. On 8.5.2012 more than 80 men of caste Hindu Community tied Madhavan and tortured him. His genitals were crushed. They also killed Chitra (Cr.No.58/2012 and 61/2012 of Thalaignayiru P.S. u.s 176 Cr.P.C).
- Ilangia 25 year old Dalit fell in love with Selvalakshmi (18) (Caste Hindu), his employer's sister's daughter. He was taken to Nellai cunningly and was murdered by the relatives of the employer in a gruesome manner. The accused were arrested on 29.04.2012.
- Mekala of Sivagangai District was in love with Sivakumar. Mekala's parents forced her and got her married to a 37 year old man. Since she decided to come out of the forced marriage and join hands with Shivakumar, her parents had let loose a murderous attack on both of them. Sivakumar died and Mekala escaped with severe stab injuries. She was admitted in the hospital (Cr.No.266/2010 - of Manamadurai P.S. for offences u/s. 302 & 307 IPC.
- Rosi of Vellore, a Dalit loved and married one Kandhan, a caste Hindu. She was burnt alive by Kandan's family on 15.12.2012.
- Nandini (21) of Thiruvallur District, a caste Hindu and Pravin a Dalit were in love. Nandini was assaulted by her relatives on 17.01.2013 and she sustained a cut in her neck. She escaped the murderous attack and was hospitalised. A case under (Cr.No.31/2013) was registered at Gummidipoondi Police Station. for offences u/s 341 & 307 IPC.).
- Bhoopathi and Sathish Kumar married out of love. Since Bhoopathi belonged to a different caste and class, sathish Kumar's mother killed Bhoopathi by force feeding poison.
- Vaidegi, a pregnant woman was abducted killed by her own family members since she married a man of a different caste. Another girl venkateswari met the same fate when she was pregnant.
- Amirdhavalli (SC)-Palaniappan(caste Hindu) got married. They had a 40 days child. Palniappan's brothers cold bloodedly murdered all the three including the 40 days child.

- Sathyapriya, a caste hindu of Ramanathapuram married Sunderesh (SC) of Thiruvallur. Bride's parents and brother convinced her to come with them on the promise of formalising the marriage strangled her and killed.
- Ilavarasan (18) a Dalit and Divya (21) a Vanniar loved each other for four years and got married in spite of staunch opposition from Divya's side. Divya's family was pressurised by caste forces to somehow get back their daughter. Meanwhile Divya's father Nagarajan's untimely death became handy for the vested interests. The caste forces which failed to secure Divya back since they were well protected by the enforcement machinery launched a plan to attack the Dalits of Ilavarasan's locality and the wretched plan was executed. An armed mob burnt some 300 houses of the Dalits and looted their houses which attracted nation's attention. Divya's mother filed a habeas corpus petition on the ground that her daughter was kept in an illegal custody. But Divya appeared before the court and declared that she wanted to live with her husband and nobody forced her to take that decision. But curiously, the case was kept pending. Ilavarasan's family claims that Divya's mother shed down her hostility and started visiting Divya at Ilavarasan's house. Thereafter Divya, who went to visit her mother did not return. She later appeared in the Court and told that she was willing to go with her mother and not with her husband. Then the mother withdrew the habeas corpus petition. In a couple of days, Ilavarasan's lifeless body was found near the railway track. Ilavarasan's family suspected a foul play. The police on the other hand, after investigation concluded that it was a suicide. Re-post mortem was done by the Doctors from AIIMS, Delhi as per the order of the High Court of Madras. The Doctors came to the conclusion that it was not a homicide. Whether it is a suicide or homicide, it is an honour crime. It resulted from the pressure of caste forces on the couple which made their lives impossible. ... But nobody was prosecuted for the abetment of his suicide. The names adding to the list of Honour Killing are increasing day by day. Some are visible and majority of these crimes go invisible.

## **PROFILE OF THE VICTIMS**

NO. OF SAMPLE CASES: 50

YEAR OF THE STUDY: 2008-2015

DECEASED PERSON: 51

FEMALE (Total): 41

- SC: 12
- others: 29

MALE (Total): 10

- SC: 6
- others: 4

## **FINDINGS**

1. In 80% of the cases, women are murdered; among them, dominant caste females are 60%
2. In 72% cases, marriage between SC and BC. Reason is caste hierarchy. In 28% cases, marriage among BCs. Reason is class, social status and social norms.
3. The method of killing will be so gruesome ranging from strangulation to administering poisons and in most of the cases, bodies were disposed of without post mortem.
4. In some cases, killing occurred even after a lapse of two years of marriage.
5. The perpetrators belonged to dominant castes alone.
6. In seven cases, the boy belongs to dominant caste himself killed his SC wife due to community or parent pressure.
7. Ilavarasan-Divya case and its consequences exposed the role of caste based political parties.
8. Since the perpetrators are the family members and they belong to dominant caste in the locality, the matters were always hushed up by the entire community.
9. Sometimes even when a complaint had been given and case had been registered, the victim do not get justice due to the insensitivity shown by the police.

## **ROLE OF LAW AND JUDICIARY**

There is no separate penal provision for honour killing. Such offences were normally registered for murder or suicide or suspicious death. Hence there is no statistics for honour killings. The role of the law enforcing agency in most of the cases exposed the tacit support shown in favour of the accused due to either known/ unknown reasons or caste prejudices.

Whenever a girl and a boy of different castes, who attained majority decided to marry and elope, the police would secure them on the basis of the false complaint of kidnapping given by the girl's parents and separate the girl from the boy and hand her over to her parents. This follows the death of any one of them in a suspicious circumstances. Sometimes if the couple strongly refuses, then the parents/ complainant will give an undertaking to the police that they will sever the connection with their daughter/son. Later they would persuade the girl to visit their parental abode under some pretext.

Since the family members themselves are the perpetrators, they would inform the police as though it is a case of suicide. Police will close the case as a suicide. In some cases, the body will be burnt without any post-mortem. In such instances, cases will be registered for causing disappearance of evidence alone. If any specific complaint is lodged by the other spouse, then a case will be registered for abetment to suicide. In some cases when an external agency or media intervene, a case of murder will be registered.<sup>8</sup>

Prosecution is another difficult area. In some cases, a family member of the perpetrator himself will prefer a complaint and later turn hostile. In most of the cases, the living spouses will not come forward to prosecute the case out of fear and there is no protection for their life. There will not be a single conviction and the victims could not get any justice.

Another lacunae is though the killings were based on caste bias, if deceased belong to non-scheduled caste, it cannot be termed as an atrocity defined under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Hence the Act cannot be invoked.

In some cases, when the democratic organisations intervened and approached the high court for suitable directions, the culprits could be brought to book through effective investigation. But compensation is granted only in minimal cases.

The state also either remains as a mute spectator or denies the existence of such crimes due to the fear of losing its vote bank of the dominant caste. When the issue of increasing numbers of honour killing in the state was raised in the State Legislative Assembly, the Chief Minister himself denied the existence of such victimisation and thereby creating a leverage for the law enforcing agency to suppress such killings.

## CONCLUSIONS

If one conduct a research into the unnatural deaths of women, we will get a clear picture about honour killing in Tamil Nadu. The terror created by dominant caste or by these nature of honour killing discourages youth especially girls to exercise their fundamental right of choice.

Rajya Sabha MP, Brinda Karat emphasized three aspects of this crime based on inter-linkages between caste, patriarchy and opportunistic politics. She said that while maintaining the façade of modernity and capitalist growth, the worst kinds of compromises were being made with retrograde, feudal and criminal practices. She called for unity against this crime not only among women's organizations but also a wide section of society including youth and men. She emphasized the need for a comprehensive law against 'honour' killings in order to tackle the multifaceted ways

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<sup>8</sup>Kubra Fatime, "*India needs a separate law to tackle honour crimes': Activists demand, is govt listening?*", available at <http://www.thenewsminute.com/article/india-needs-separate-law-tackle-honour-crimes-activists-demand-govt-listening-62382>

in which crimes in the name of 'honour' manifest around us including through harassments, threats, public humiliation, community boycott, etc.

The Law Commission of India in its 2001 report, had recommended bringing a bill "*to provide for, in the interests of protecting individual liberty and preventing victimisation, prohibition of unlawful assemblies and other conduct interfering with the freedom of matrimonial alliances in the name of honour and tradition and for the matters connected therewith or incidental thereto.*" The National Commission for Women also has drafted a model bill. But till date there is no law in place.

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## BEEF BAN - CONSTITUTIONALLY VALID OR NOT

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### Abstract

*During the ancient period women were treated as chattels and were mistreated and mishandled. But from the age old society, man has been cruel to animals too. The rights of these need to be protected and preserved. Hence the laws made in favour of them shall be maintained by the people and State but they shall be reasonable. If they impose unnecessary restrictions on people then they should be declared void.*

*The GauvanshRaakshan and Gausamvardhan Bill<sup>1</sup> are two such laws which protect the cows, buffaloes and bullocks from being slaughtered. The law makes slaughtering of cows, bulls and bullocks a criminal offense which leads to rigorous punishment from 3 to 5 years. Various states have banned slaughter of cows like Maharashtra, Andhra Pradesh, Assam, Hyderabad, Jammu and Kashmir, and Bihar<sup>2</sup>. But the question is whether or not such ban imposed on people is valid.*

*India's culture is really glorious and cow has religious sentiments attached to it, the author likes to elucidate that another reason for banning its slaughter being, when a*

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<sup>1</sup>The Haryana Assembly passed the two bills on March 16; 2015 which bans the slaughtering of cow and sale of beef in the state. With the ban on beef, the new bill also aims to promote conservation and development of indigenous breeds of cows. For this, the legislation has also planned to establish institutions to keep, maintain and take care of the stray cows, injured cows, sick cows and as well as uneconomic cows. According to the bill, which has passed in two amendments, the sale of beef has completely banned in the state. The legislation has set an imprisonment for not less than 3 years and may go up to 10 years, if anyone found slaughtering of cows or selling beef, along with a fine of up to 1 lakh rupees. The bill also concentrates that if any person found in export of cow for slaughtering purpose would be sentenced to imprisonment for up to 7 years or will have to pay a fine of up to 70,000 rupees or both.

<sup>2</sup>Md. Abdul Faheem Qureshi, *Overview of the Beef Business in Hyderabad*, GoSadan Magazine, available at <http://gosadanmagazine.blogspot.in/?view=classic#!>, last seen on 12/10/2016

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*hen is slaughtered it is killed in one stroke but before slaughtering cows are slaughtered with in human techniques like shooting it, beating her for 4-5 days and then killing her which is quite vexatious.*

*The author likes to substantiate that on the other hand state has no right to restrict people from eating something. They have a right to freedom to do anything which they feel as being appropriate for them. There was quite recent news on 8<sup>th</sup> October 2015; several people in Jammu and Kashmir had beaten a MP for showing their disapproval towards beef ban<sup>3</sup>.*

*Recently cow slaughter and beef consumption have become extremely contentious issues in recent months, with anti-beef laws becoming stricter in many states across the country. It would seem that there has never been a worse time in India to be a butchers or someone who eats beef. The recent arrests of three men in Haryana for allegedly selling beef<sup>4</sup> has provided an opportunity to examine the laws that ban the slaughter of cows and the consumption of beef that are currently in operation in India and whether or not it is constitutionally valid.*

**Key Words:** Beef Ban, Constitutional ideas, Laws, Religious belief, Concluding Remarks.

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## **OPTIMISTIC CONTRIBUTION OF JUDICIARY**

Maharashtra is the only state wherein beef ban topic is like a cinch, every time conflict issues problems arises in that particular state comparatively. On **May 6<sup>th</sup> 2016, Bombay High Court** in the case of **M. Jagtiani v. The State of Maharashtra** says **“Eating beef legal and the importing beef is also made legal”**. The Bombay High Court struck down two provisions of the Maharashtra Animal Preservation Act 1976 which prohibits the imports of beef and criminalises possession of beef.

The Bombay High Court ruled on 6<sup>th</sup> May 2016, that it will no longer be illegal to consume or keep imported beef but upheld the Maharashtra government’s ban on slaughter of cow and bullocks in the state. A division bench of Justice Abhay Oka and Justice SC Gupte struck down two provisions of the Maharashtra Animal Prevention Act, 1976 which prohibit the import of beef and criminalise its possession saying they violate the **‘Right to Privacy’<sup>5</sup>** and the **‘Right to Choice of Food’<sup>6</sup>** that is guaranteed under Article 21 of the Constitution.

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<sup>3</sup>BBC News, ‘Beef party’: Indian BJP members beat Muslim member in Kashmir assembly, available at <http://www.bbc.com/news/world-asia-34473354> last on 15/10/2016

<sup>4</sup>*Beef row: Where it is illegal and what the law says*, The Indian Express, (27/07/2016) available at <http://indianexpress.com/article/india/india-news-india/beef-madhya-pradesh-video-cow-vigilantes-gau-rakshaks-2938751/> last seen on 15/10/2016

<sup>5</sup>Article 21 of the Constitution of India states that *“No person shall be deprived of his life or personal liberty except according to procedure established by law”*. The Right to life in Article 21 has been

Last year, the Maharashtra government enforced a complete ban on beef and made the sale or consumption of the meat punishable by a five year jail term and Rs 10,000 fine, sparking a raging debate over the right to choice. A number of petitions were filed in the High Court challenging the constitutional validity of various provisions of the Maharashtra Animal Preservation Act, 1976<sup>7</sup> which were introduced by an amendment but brought into force 20 years later in March 2015. The original 1976, Act banned slaughter of cows, but the amendment also prohibited slaughter of bulls and bullocks and possession and consumption of their meat. The Senior Advocate had pointed out that there was a ban on the slaughter of cows, bulls and bullock in several other states but there was no ban on import of beef from other states or other countries. He said section 5B<sup>8</sup> and 5D of the Act<sup>9</sup> and curtails the fundamental right of choice of food of citizens, covered under the right to liberty guaranteed by Article 21 of the Constitution of India. It was also pointed out by the senior advocate that the said reasonable restrictions can be imposed on fundamental rights, but such restrictions must be justified on the ground of some compelling public interest<sup>10</sup>.

*"Injustice anywhere is a threat to justice everywhere"*

-Dr Martin Luther King.

*"The cow and the working bullock have on their patient back the whole structure of Indian agriculture"*

- Lord Linlithgow

liberally interpreted so as to mean something more than mere survival and mere existence or animal existence. It therefore includes all those aspects of life which makes a man's life more meaningful, complete and worth living and right to privacy is one such right. The first time topic was ever raised was in the case of **Kharak Singh v. State of UP** AIR 1963 SC 1295 it was held that the Right to Privacy is a part of right to protection of life and personal life and here the court had equated privacy to personal liberty.

<sup>6</sup>In **Shantistar Builders v. Narayan Khimalal Totame** the court held that *"The Right to life would take within its sweep the Right to Food, the Right to Clothing and the Right to decent environment and a reasonable accommodation to live in."*

<sup>7</sup>According to the Maharashtra Animal Prevention Act 1976 Section 5 of the Act talks about the Prohibition of slaughter of cows wherein it says that "Notwithstanding anything contained in any other law for the time being in force or any usage or custom to the contrary no person shall slaughter or cause to be slaughtered or offer for slaughter any cow, in any place in the state of Maharashtra".

Section 6(2)(b) states that *"the scheduled animal, if male is or is likely to become economical for the purpose of breeding"* and

Section 6(2)(c) states that *"the scheduled animal if female is or is likely to become economical for the purpose of giving milk or bearing offspring"*

<sup>8</sup>Prohibition on sale, purchase, disposal in any other manner of cow, bull or bullock: *"No person shall purchase, sell or otherwise dispose of or offer to purchase, sell or otherwise dispose of any cow, bull or bullock for slaughter or knowing or having reason to believe that such cow, bull or bullock shall be slaughtered"*.

<sup>9</sup>Section 5D of the Maharashtra Animal Prevention Act 1976 Prohibition on possession of flesh of cow, bull or bullock slaughtered outside the State of Maharashtra: *"No person shall have in his possession flesh of any cow, bull or bullock slaughtered outside the State of Maharashtra"*.

<sup>10</sup>*Bombay HC says eating beef legal, upholds ban on cow slaughter*, Hindustan Times, (06/05/2016) available at <http://www.hindustantimes.com/india/cow-slaughter-not-allowed-but-beef-lovers-can-eat-meat-in-maharashtra/story-K5v2Cggb25sHSJATE6R4gN.html> accessed on 14/10/2016



## INTRODUCTION

It is often said that the legislature is the best judge of the needs of its people<sup>11</sup>. It understands the foremost requirements of its populace, be it legal, social or economic and devises its policies accordingly. Another important pillar of our democracy is the Indian Judiciary described by some as the “*sentinel on qui vive*” is as one would prefer to believe always on the alert protecting citizen’s rights. The apex court of the land, the Supreme Court of India is perhaps one of the most revered and trusted constitutional body in the country. Together, through a system of checks and balances the organs of our government have efficiently shepherded our young democracy to great heights over several decades.

A major complication which these institutions have encountered for quite few years, is the question whether to ban the slaughtering of milch draught cattle. The debate over banning of beef resurfaced recently after the Maharashtra Animal Preservation Act, 1995 received assent of Honourable President Pranab Mukherjee on **26<sup>th</sup> February 2015** and was subsequently published in the government gazette on **4<sup>th</sup> March 2015**<sup>12</sup>. The origin of this debate in the independent India can be traced back to circa 1948, when the framers of the constitution debated this issue in the constitution Assembly. Since then, this dilemma has been a recurrent attribute of the world’s largest democracy.

The author shall like to pinpoint that India is a country with variety of cultures, faiths and languages. Being the most diverse country in the world it often leads to conflicting faiths and practises. This confers a responsibility on the state to monitor such cultural and ethnic intolerances, besides performing its police and welfare functions. One such instance or religious conflict was seen in the state of Maharashtra where in possession and slaughtering of beef and cows respectively was declared illegal by passing the Maharashtra Animal Protection (Amendment) Act, 1955.

Recently, it has banned the possession and sale of beef and has extended its ban on the slaughter of the cows to include bulls and calves. This legislation particularly aims at saving lives and should therefore be supported particularly by those who consider themselves forward thinking and liberal minded in their approach rather for the reasons that are entirely non-religious. Although, the state’s decision has been heavily criticized on social media by people who wish to appear open-minded and respectful of communities in which eating beef is common and by

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<sup>11</sup>K.Parasaran, *Accountability of Justice*, The Indian Express (27/07/2016) available at <http://indianexpress.com/article/india/india-news-india/beef-madhya-pradesh-video-cow-vigilantes-gau-rakshaks-2938751/> last seen on 14/10/2016

<sup>12</sup>SaujanyaSreejan&Diptimaan Kumar, *The Beef ban Debate: Prevailing mistrust of the legislature’s competence and the Judiciary’s prudence*, available at <http://jlsr.thelawbrigade.com/wp-content/uploads/2016/02/saujanyadeeptimaan.pdf> , last seen on 14/10/2016

those who simply want to eat cows and consider it their “personal choice and their own wish” to do so<sup>13</sup>.

But practically speaking, the arguments raised mostly concern the **Right of Animals to Live**<sup>14</sup>, the **Prevention of Animal Cruelty** and the **Preservation of Animal Husbandry**. Realising this the supporters of this legislation propose that cows serve as an important source of milk and slaughtering of cows would mean cutting of the long term benefits that would be enjoyed by the people.

Therefore the prosperity of India to a very large extent depends on her cattle and the soul of the country can feel satisfied only if cattle slaughter is banned completely and simultaneous steps are taken to improve the cattle, which are in a deplorable condition at present.

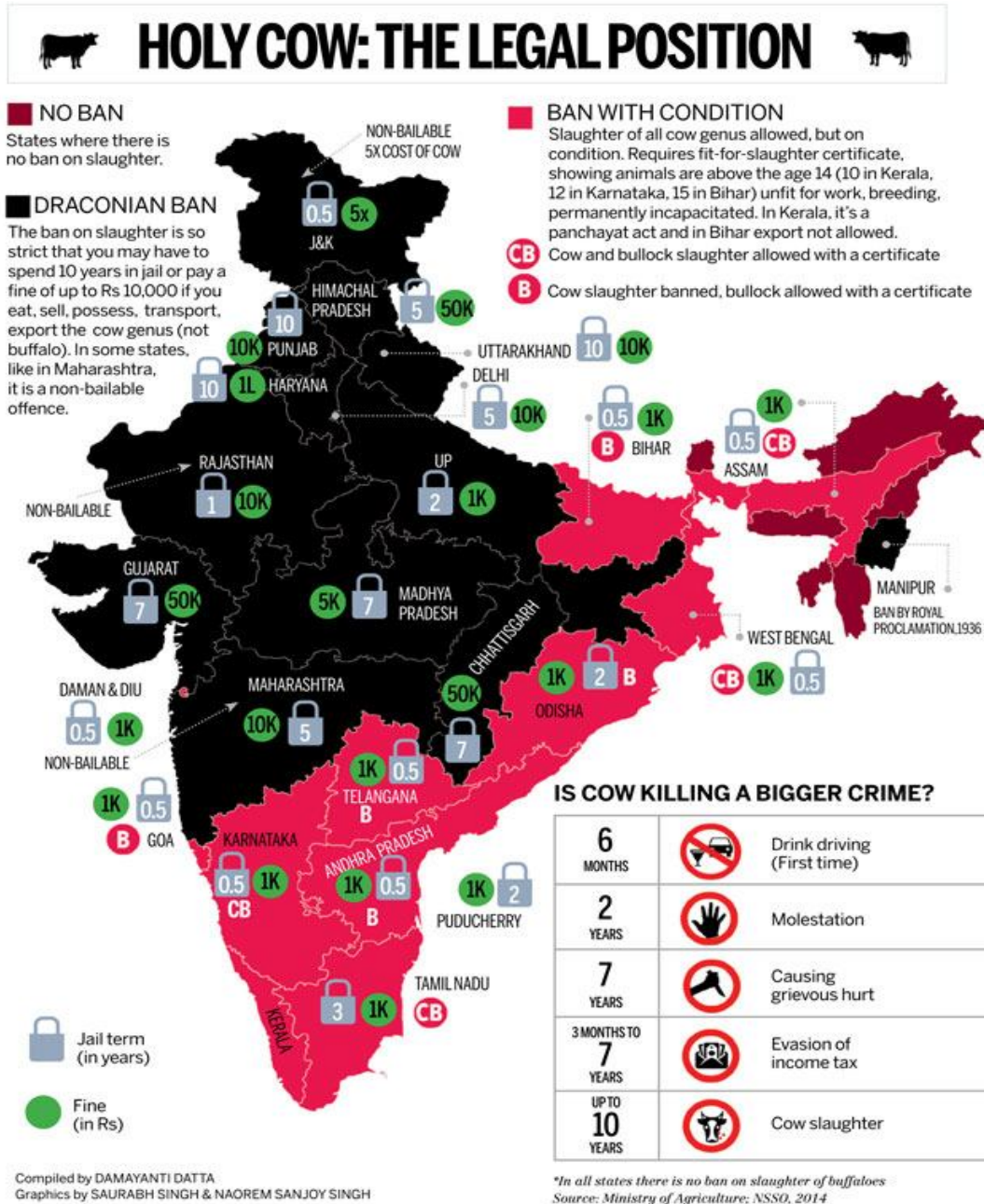
The states where Ban of Beef and States where Banning of Beef with conditions and States where there is Draconian Ban with harsh punishment are listed out in the below image<sup>15</sup>:

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<sup>13</sup>*Why Forward- Thinking Liberals should support the beef ban*, available at <http://www.huffingtonpost.in/poorva-joshipura/why-forward-thinking-liberals-should-support-the-beef-ban/> last seen on 15/10/ 2016

<sup>14</sup> Animal Rights is the idea that some, or all, non-human animals are entitled to the possession of their own lives and that their most basic interests such as the need to avoid suffering should be afforded the same consideration as similar interest of human beings.

<sup>15</sup><http://www.slideshare.net/manahchhabra/beef-55821823> last seen on 16/10/2016



### HISTORY OF THE BEEF EATING PRACTICE

Revisiting through the history the author would like to explain that eating beef is traditional practise among Hindus and various religions. Eating Beef, like in the western world was popular with the Vedic Indians also. Practically all the important ceremonies and sacrifices were attended with the slaughter of cows and bulls. The *Gomedha* and *Asvamedha*<sup>16</sup> sacrifices are important in this respect. In Rig Vedic<sup>17</sup>

<sup>16</sup>Traditional calling of cows in Tamil

<sup>17</sup>Rigveda declares "On the occasion of a girl's marriage oxen and cow are slaughtered".

times goats, sheep, cows, buffaloes and even horses were slaughtered for food and for religious sacrifice and their flesh used to be offered to the gods.

In various old Hindu sources like *Dharma Sutras*, *Dharma Sastras* throws some light on the beef eating concept, where in the *Smriti* literature, Manu script<sup>18</sup> like *vasisthaDharmasutra*<sup>19</sup>, sanctions the consumption of the flesh of all domestic animals which have but one row of teeth<sup>20</sup>. That this statement clearly indicates that it obviously includes the beef and it is clear from the comments of even such orthodox pundits like Medhatithi and Raghavananda. The *YajnavalkyaSmriti* distinctly lays down that a mah-oska or 'big bull' is to be slaughtered on such occasions. Among the *Sutras*, *Kalp sutra* and *Grhyasutra*, display less restraint and distinctly suggest beef as an item of food on different occasions of life.

According to *Sankhyayana-Sutra* a bull or a sterile cow should be killed in the house of the father of the bride on the wedding day and also in the house of the bridegroom when the husband and the wife arrive after marriage. Even at *Sraddhas* or periodical oblations to the manes, the sacrifice of a bull or cow is recommended by the *Apastamba* and *ParaskaraGrhyasutras*. *Yajnavalkya*<sup>21</sup> indicates how the aroma of beef was thought to be an ailment for the spirits.

According to *Vasistha-sutra* "an ascetic who invented to dine at a sacrifice... rejects meat shall go to hell for as many years as the slaughtered beast has hairs" The *Khadira* and *Gobhila-Sutras* prescribed the sacrifice of a black cow to the deity of the dwelling-houses when a new house was constructed<sup>22</sup>.

The present history of India, in so far as the flood of cattle slaughter is concerned would always remain related to this unfortunate lapse of the constituents Assembly and its failure to agree to the inclusion of the clause in the fundamental rights chapter<sup>23</sup>.

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<sup>18</sup>In **Chapter 5 Verse 30** states that "It is not sinful to eat meat of eatable animals for brahma has created both the eaters and the eatables" and **Chapter 5 Verse 35** states that "when a man who is properly engaged in a ritual does not eat meat, after his death he will become a sacrificial animal during 21 rebirths".

<sup>19</sup>VasisthaDharmasutra writes "If a Brahmin refuses to eat the meat offered to him on the occasions of 'Sharddha' or worship, he goes to hell"

<sup>20</sup>Manu Smrti: *The Laws of Manu*, available at [http://www.hindubooks.org/scriptures/manusmriti/ch5/ch5\\_31\\_40.htm](http://www.hindubooks.org/scriptures/manusmriti/ch5/ch5_31_40.htm) last seen on 15/10/ 2016

<sup>21</sup>According to *ApastambGrihsutram* says "The cow should be slaughtered on the arrival of a guest, on the occasions of 'Shraddha' of ancestors and on the occasions of a marriage".

<sup>22</sup>MahadevChakravarti, *Beef Eating in ancient India*, available at [http://www.srimatham.com/uploads/5/5/4/9/5549439/beef\\_in\\_ancient\\_india.pdf](http://www.srimatham.com/uploads/5/5/4/9/5549439/beef_in_ancient_india.pdf) last seen on 15/10/2016

<sup>23</sup>Report of National Commission on Cattle 2002 Chapter I para 58 last seen on 14/10/2016

## COW SLAUGHTER – NEW SIGHT AND PLIGHT

Cow slaughter and the consumption of beef are highly volatile, emotive and politicised subjects in India. Hindus who comprise 80% of India's 1.2 billion populations<sup>24</sup>, revere cows and the sale and consumption of beef is banned or restricted in many states.

Until now we have looked up the perspective in ancient times which Manu code has given, it seems to be hypothetical but still customs has to be digested and customs are one of the main reasons and ancient source of law so basing on this the Manu Code<sup>25</sup> has to be considered as a valid evidence to state that eating beef is a practise among Hindus. So we try to link various articles given under The Constitution of India with the idea of Beef ban whether it is unconstitutional or constitutional.

In 1923, Mahatma Gandhi has first talked about "*GauVanshBandhi*" meaning ban on cow slaughter to promote the village economy. The architect of Indian Constitution Dr. B.R. Ambedkar has made the provision to facilitate the state government to take the decisions<sup>26</sup>. The basic Article which is found in the Directive Principle of State Policy under Part IV of The Indian Constitution which talks about the beef ban as Constitutional under **Article 48**.

- According to **Article 48** of the Indian Constitution<sup>27</sup>, a Directive of State Policy provides the basis for legislative efforts at regulating and prohibiting cow slaughter in India. It reads as follows: "*The state shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall in particular take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle.*"<sup>28</sup>

The explanation is that Article 48 directs the state to take steps to organise animal husbandry on modern and scientific lines and in particular to take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and milch and draught cattle. The directive for taking steps for preventing the slaughter of animals is quite explicit and positive and contemplates a ban on the slaughter of the several categories of animals specified therein, namely cows and calves and other cattle which answer the description of milch or draught cattle. The protection recommended by this part of the directive is confined only to cows and

<sup>24</sup>Religious Census: Hindu Comprise 79.8% of India's population available at <https://www.thequint.com/india/2015/08/25/religion-census-hindus-comprise-798-of-indias-population> last seen on 14/10/2016

<sup>25</sup>Manu-Smriti also called as "Laws of Manu" and "Manava Dharma Shastra (The Dharma text of Manu), traditionally considered as one of the most authoritative of the books of the Hindu Code in India. It basically throws light on the concepts of Duties, Rights, Laws, Conducts, Virtues and others.

<sup>26</sup>Deepali Sharma, *Cow Slaughter*, available at <http://ujala.uk.gov.in/files/ch05.pdf> last seen on 12/10/2016

<sup>27</sup>Article 48, The Constitution of India

<sup>28</sup>V.N. Shukla, *The Constitution of India*, 383 (M.P. Singh, 12<sup>th</sup> ed.,2013)

calves and to those animals which are presently or potentially capable of yielding milk or doing work as draught cattle but does not from the very nature of the purpose for which it is obviously recommended extend to cattle have ceased to be such.

In *State of Gujarat v MirzapurMotiKurshiKasabJammatt*<sup>29</sup>, the court however over ruled this well-established position and upheld total ban on the slaughter of cow and its progeny under this provision. Later it clarified that Article 48 did not require the state to impose a total ban on the slaughter off bovine cattle including cow and its progeny.<sup>30</sup>

The Parliament and State Legislature derive their power to legislate under **Article 246**<sup>31</sup> of the constitution of India read with schedule 7, which divides subject matters in terms of a union, state and concurrent list. The regulations of cow slaughter are understood to be a state subject-entry 15 of List II to the seventh schedule reads as "*preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice*".<sup>32</sup>

Drawing their legitimacy from this article, most states in India have varying prohibitions and restrictions on the slaughter of cattle on the transport of cattle for the purpose of slaughter and even on the sale, usage and possession of beef. These prohibitions and restrictions are tempered by differing conceptions of the use value of the cow and other bovine animals.

## A CONSTITUTIONAL PRESPECTIVE

Constitution is regarded as the supreme law of land. Any law which is not in consonance with the constitution is invalid. No Act or any other law can supersede the constitution. The Act banning slaughter of cows is constitutionally valid as even supreme court's judgement in the case of *Arup Bhyan v State of Assam*<sup>33</sup> wherein it was stated that "*the constitution is the highest law of land and no statute can violative it. If there is a statue which appears to violate it, we can declare it unconstitutional or we can read it down to make it constitutional*".

- The complete ban is totally justified as it promotes greater public interest. The given Act is not against any provision of the constitution, in fact is in consonance with the Seventh schedule of Article 48 as explained above and also it is correlated with **Article 48-A** states that "*The state shall endeavour to protect and*

<sup>29</sup>State of Gujarat v MirzapurMotiKurshiKasabJammatt (2005) 8 SCC 534

<sup>30</sup>AkhilBharathGosevaSangha v State of Andhra Pradesh (2006) 4 SCC 162.

<sup>31</sup> According to Article 246(1): Subject matters of laws made by Parliament and by the Legislature of States: "*Notwithstanding anything in clause (2) and (3), parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule of the Indian Constitution which is commonly referred to as the Union List.*"

<sup>32</sup> Supra 22., at 384

<sup>33</sup>Arup Bhyan v State of Assam AIR 2011 SC 957

*improve the environment and to safeguard the forests and wild life of the country”.*  
<sup>34</sup>

- According to **Article 51-A (g)** of the constitution “*It shall be the duty of the citizen of India to protect and improve the natural environment including forests, lakes, rivers and **wild lives** and to have **compassion for living creature**”.*<sup>35</sup>The author is of the view that “The compassion for living creature” is interpreted as such that the individual has to show sympathy towards the animals which in this case includes cows and bulls and calves.
- Article 48 read with **Article 37**<sup>36</sup> empowers the government to make laws prohibiting cow slaughter. This is clearly laid down in the very famous case of *Hanif Qureshi v state of Bihar*<sup>37</sup>, wherein the court held that “*The directive contained in the latter part of the article is quite specific and enjoins the prohibition of slaughter of any species of cattle mentioned, irrespective of their utility from the standpoint of agriculture or animal husbandry*”.
- Further **Articles 36-51** included in the part IV of the constitution contains certain directives which it shall be the duty of the state to follow in the matter of administration as well as in making laws also the citizen owes the duty specified in the **Article 51-A** to the state and if he does not care for the duties he should not deserve the right.

Even in numerous numbers of cases like *AbdulsattarYusufbhai Qureshi and Ors v State of Gujarat*<sup>38</sup>, *State of West Bengal v AshtoushLahiri*<sup>39</sup>, the Supreme Court held such “*bans to be totally valid*”.

In the case of *Mohd. HanifQuareshi v State of Bihar*<sup>40</sup>, the Supreme Court held as under:

- a) “*A total ban on the slaughter of cows of all ages and calves of cows and calves of male or female was quite reasonable and valid and is in consonance with the directive principles laid down in Article 48.*
- b) *Total ban on the slaughter of cows or breeding bulls or working bullocks as long as they are capable of being used as milch or draught cattle was also reasonable and valid.”*

Therefore, the court lays down in the above mentioned cases that “a law banning cow slaughter should not be considered unconstitutional per se”. The discussion of beef ban is debatable since on the one hand it is; various judgements by the High Courts and Supreme Court held the ban as constitutionally valid but on the other face it even

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<sup>34</sup> Supra 25, at 384

<sup>35</sup> Art. 51-A (g), The Constitution of India.

<sup>36</sup>Article 37 guarantees that “*The provisions contained in this part shall not be enforceable by any court but the principles therein laid down are nevertheless fundamental in the governance of the country and shall be the duty of the state to apply these principles in making law*”.

<sup>37</sup>Hanif Qureshi v state of Bihar AIR 1958 SC 731

<sup>38</sup>AbdulsattarYusufbhai Qureshi and Ors v State of Gujarat AIR 2008 SCI 169

<sup>39</sup>State of West Bengal v AshtoushLahiri (1995) 1 SCC 189

<sup>40</sup>Mohd. HanifQuareshi v State of Bihar AIR 1958 SC 731

though various judgments are in favour of banning beef, many scholars are of the opinion that it unconstitutional in Secular India. The other side of the coin gives us more validated points that eating beef is provided under the constitution as the fundamental right and hence should not ban it **completely**.

The very first fundamental right that provides eating beef is constitutionally valid is given under **Article 19(1)(g)**<sup>41</sup>.

- The parliament has a power to impose reasonable restrictions on the trade and commerce if they are in public interest. The freedom under both **Article 19(1)(g)** "to practise any profession or to carry on any occupation, trade or business". This clearly gives the account that the individuals who are the citizens are India can practise any profession which they like because they have every freedom to practise.<sup>42</sup>
- The clause 19(6) gives the idea that reasonable restrictions can be imposed on the trade and commerce if they are in violation with the public interest. But according to the author that here most of the times the restrictions are based on only one religious sentiments (Hindus) and this do not have any interest in the public at large. So this reasonable restriction is not valid.

Another validated question that makes this beef ban should not be there is the term "**Secular**".

- The term "**Secular**" was inserted by the **42<sup>nd</sup> Amendment Act 1976**, explains that "*The state does not recognize any religion as a state religion and that it treats all religion equally and with equal respect without in any manner interfering with their individual rights of religion faith or worship*".

In the case of *The Ahmedabad St. Xaviers College v State of Gujarat & Anr*<sup>43</sup> the court held that "*Secularism is neither **anti-god nor pro-god**, it treats alike the devout, the agnostic and the atheist*".

- Under **Article 25(1)**<sup>44</sup> "To Profess and practise" would thus include the freedom to practice rituals and ceremonies which are "*integral parts*" of the religion. For the application of **Article 25(2)(a)**<sup>45</sup> it is necessary to classify religious.

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<sup>41</sup>Article 19(1)(g) guarantees Protection of certain rights regarding Freedom of Speech and Expression: "*To practise any profession, or to carry on any occupation, trade or business*".

<sup>42</sup>Supra 25, at 172

<sup>43</sup> The Ahmedabad St. Xaviers College v State of Gujarat & Anr AIR 1974 SC 1389

<sup>44</sup> Article 25(1) guarantees Freedom of Conscience and Free Profession, Practise and Propagation of Religion: "*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 to Freely to Profess, Practise and Propagate religion.*"

<sup>45</sup>Article 25(2)(a) guarantees Freedom of Conscience and Free Profession, Practise and Propagation of Religion: Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law: "*Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practise*".



- **Article 25(1)** guarantees to every person and not merely to the citizens of India, the freedom of conscience and the right freely to profess, practise and propagate religion. The right is not only to entertain such religious beliefs as may be approved by his judgement or conscience but also to exhibit his sentiments in overt acts as are enjoined by his religion.

In the words of article, he may “**profess, practise and propagate his religion**”. To profess a religion means the right to declare freely and openly one’s faith<sup>46</sup>. He may freely practise his religion. “Religious practise or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines”<sup>47</sup>. So, to conclude that beef eating is a practise among Muslims and some extent among Hindu also. So if their religion permits to practise the beef eating. So beef ban is unconstitutional.

In *State of West Bengal v Ashuthosh Lahiri*<sup>48</sup> in appeal the Supreme Court held that it was a settled legal position that there was no fundamental right of Muslims to insist on slaughter of healthy cows on the occasions of Muslim functions.

Further in the case of *State of Gujarat v Mirzapur Moti Kureshi Kassab Jammata*<sup>49</sup>, the Supreme Court also held that “*Slaughtering of cows on Bakr’id is neither essential to nor necessarily as part of the religious ceremony.*”

Finally to accomplish the author is of the opinion that the legal implications can be analysed through the different judgements given by different courts. In the agricultural sector, use of animals for milking, draught, breeding or agricultural purposes has great importance. It has become necessary to preserve and protect the agricultural animals like bulls and bullock. The growing adoption of non-conventional energy sources like biogas plants, even waste material have come to assume considerable value. After the cattle ceases to breed or are too old to do work, they still continue to give dung for fuel, manure and bio-gas and therefore, they cannot be said to be useless. Let’s have this idea on one thought.

In order to give effect to the policy of the state towards securing the principles laid down in **Articles 47, 48 and clause (b), (c) of Article 39** of The Constitution of India, it was considered necessary also to impose total prohibition against the slaughter of progeny of cow.

There has been some difference in the Supreme Court judgements regarding the ban of the slaughter of the cow and its progeny from 1958 till 2015. In the judgement of 1958, it was held that a total ban was not in the interest of the general

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<sup>46</sup>RatilalPranachand Gandhi v State of Bombay AIR 1954 SC 388; 1954 SCR 1055

<sup>47</sup>Punjabrao v D.P. Meshram AIR 1965 SC 1179

<sup>48</sup>State of West Bengal v AshuthoshLahiri AIR 1995 SC 464

<sup>49</sup>State of Gujarat v MirzapurMotiKureshiKassabJammata 2005 (8) SCC 534

public. **Article 48** of The Indian Constitution was taken into consideration and it was held that **Article 37** the Directive Principles of State Policy were not enforceable by any court of law and therefore, **Article 48** had no relevance for the purpose of determining the constitutional validity of the legislation ban on cow slaughter.

In the judgement of *Narendra Kumar & Ors v The Union of India*<sup>50</sup>, the distinction between cases of “control” and “prohibition” was clearly explained and held that when the exercise of a fundamental right is prohibited, the burden of proving that a total ban on the exercise of the right alone would ensure the maintenance of the general public interest lies heavily upon the state. But in the judgement of *Usmanbhai Hassan and Ors V state of Gujarat*<sup>51</sup>, court took note of improvement and more scientific methods of cattle breeding and advancement in the science of looking after the health of cattle in the state of Gujarat.

The new scenario that has been reached wherein the cattle remain useful for breeding and other agricultural purposes above the age of 16 years as well. As the bulls and bullocks up to 16 years of age continued to be useful, the prescription of the age of 16 years up to which they could not be slaughtered was held to be reasonable restriction.

The other aspect is the **Article 21** which states that “*No person shall be deprived of his life or personal liberty except according to procedure established by law*”.<sup>52</sup>

§ According to Article 21 of our Constitution, **Right to Choose to Eat** is included in the Right to privacy and Right to privacy is included in Article 21. This article is balanced by the Directive Principles of State policy<sup>53</sup>. “*Right to Eat is neither an absolute right nor freedom*”. Freedom is governed by the laws. But there is no nexus between the preservation of animals and import of beef outside the state. Killing cows breed is different from the milking ones. Only easing the enforcement of the laws should not be the only reason behind regulating the beef industry. The state and the police authorities cannot invade privacy of the individuals to check the possession of meat<sup>54</sup>.

Another aspect to be analysed in the statute is the restraint on the Right to Choice of food. From the author’s perspective, in India, beef eating is traditional practise. There is nothing new in it. India is a democratic country where people cannot be forced to eat something or cannot be restraint from eating something. So how can the state impose ban on beef, Come on India is a Secular country. If the government wants to

<sup>50</sup>Narendra Kumar & Ors v The Union of India (1960) 2SCR 375

<sup>51</sup>Usmanbhai Hassan and Ors V state of Gujarat (1986) 3 SCC 12

<sup>52</sup>Supra 34, at 206; “Personal liberty was confined to freedom from detention or physical restraint”.

<sup>53</sup>Sandip Sukhtankar, *The right to choose your food*, The Indian Express (02/08/2011) <http://archive.indianexpress.com/news/the-right-to-choose-your-food/825754/>, last seen on 15/10/2016

<sup>54</sup>Government of India, *Ministry of Agriculture and Farmers Welfare, Department of Animal Husbandry, Dairying & Fisheries*, available at <http://dahd.nic.in/>, last seen on 14/10/2016

regulate the beef industry then it has to do keeping in view the sentiments of all religions.

## **THE RIGHT TO STEAK**

### **Calling for an Ecological Balance**

The author here likes to widened the scope of Right of Steak, wherein it is not the fundamental right yet. So the author is of the opinion that the Right to Steak can be added as a fundamental right under article 19(1) (a) i.e. Freedom of Speech and Expression.

The author with lot of cherish would like to share some of the “**Ecological Balance Theories**”, in order to understand the meat eating habits of man, one has to look into the food chain that has transcended over the years. As a reader it will be wondering how meat is said to beef the common language that is used by various people in India is meat normally meat is the general term that is used in the non-veg. Eating meat and cooking food is an integral part of human, enabling the brains of our pre-human ancestors to grow dramatically over a period of a few million years. Therefore, we owe our existence and our anthropology to meat. A recent finding implies that meat must have been an integral and not sporadic element of the pre-human diet more than 1 million. It is opined that the incorporation of animal matter into the diet played an absolute essential role in the evolution of human beings. Therefore, it is scientifically settled that eating meat is not unnatural as most people believe.

From the ideas of the author it is to bring to the vision that humans are omnivores. However, various faiths such as Jainism and Hinduism consider certain animals as scared and therefore abstain from consuming them as a matter of religious practise. So their wishes and beliefs cannot be taken into account to impose ban on beef eating. This practise has transcended over the years, making them circumscribe the notion that humans are naturally vegetarians. India being a secular democracy, every citizen must have the right to choose what he wants to consume. Food is the integral to the body and its consumption and has a bearing on other rights like education, health, work and information. Even the Supreme Court has upheld this right on many occasions. However the question here is the right to choose what one wants to eat and whether the law should regulate one’s dinner table. The arguments raised mostly concern the right of animals to live, the prevention of animal cruelty and the preservation of animal husbandry. The religious sentiments argument has cleverly been eclipsed by constitutional directives.

### **Calling for a Constitutional Perspective**

Since religion has no constitutional bearing on “**One’s Right to Choose What One Consumes**” for breakfast, lunch and dinner. The Cattle Preservation and Development Committee which was chaired by Sardar Datar Singh made the following recommendations:

This committee is of the opinion that slaughter of cattle is not desirable in India under any circumstances whatsoever, and that its prohibition shall be enforced by law. The prosperity of India to a very large extent depends on her cattle and the soul of the country can feel satisfied only if cattle slaughter is banned completely and simultaneous steps are taken to improve the cattle which are in a deplorable condition at present<sup>55</sup>.

Although the concerns raised were genuine, one must examine the whole intent of the legislature keeping in mind the prevailing circumstances. Back when the constituent assembly were debating the insertion of the said DPSP, the prerogative of the state was to sustain agriculture which was the primary source of income for the country. But with the era of globalisation, the agrarian economy is replaced and regenerated. In fact, cows are no longer necessary for the sustainability of the agricultural requirements of the country<sup>56</sup>. When it is clear, on one side that the modern rapid growth of technology makes a clear cut view that there is no need of cows and bulls in the agriculture sector. But the argument from the state is that cows are used in the agricultural sectors.

### **BALANCING RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY**

The very fact that the Directive principles of State Policy are non-enforceable in a court of law creates a notion in mind that they are something lesser than fundamental rights of a citizen. In one of its earliest decisions in 1951 held that the Directive Principles of State Policy have to conform to and run as subsidiary to the chapter on Fundamental rights<sup>57</sup>. No doubt, *Hanif case* in 1958 was decided on the same lines wherein it was opined that “*that the state should certainly implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights,*” for otherwise the protecting provisions of chapter III will be “a mere rope of sand”. This led the bench of 5 judges in this case to hold that a total ban on the slaughter of she-buffaloes and bulls after they ceased of yielding milk or breeding or working as draught animals cannot be supported in light of economic factors. Hence the restriction on **Article 19(1)(g)** was not reasonable in the interest of the general public. The court opined that on attaining a certain age, the cattle lost their potential as milch and draught animals, and if a ban was placed on their slaughter it would lead to pecuniary loss to their owners since they would have to carry an additional burden of feeding them. This argument was supplemented by the observation that the state was unable to provide adequate shelter homes to protect such decrepit animals. In other words, laws made under Article 48 could not be in contravention to the Fundamental Rights contained in the part III.

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<sup>55</sup>Dr. Sunil Gupta, *Directive principles prohibition of cow slaughter*, available at <http://drsunilgupta.com/directive-principle-prohibition-of-cow-slaughter-be-centrally-regulated/last> seen on 17/10/2016

<sup>56</sup>Alwyn Sebastian, *The Right to Steak: Constitutional Perspective*, 1 International Journal of political science (IJPS) 32 (2015), available at <https://www.arcjournals.org/pdfs/ijps/v1-i1/4.pdf> last seen on 14/10/2016

<sup>57</sup>State of Madras v Smt. Champakam Dorairajan AIR 1951 SC 226

This view has been contested from the very beginning on the ground that, being part of the same constitution that the fundamental rights and the directive principles are equally important and neither of them is superior or inferior to the other.

In, in 1967 it was pointed out that the Directive principles of part IV are as fundamental as the constitutional rights embodied in Part III and **Article 37** imposes a constitutional duty upon the state to apply these principles in making laws<sup>58</sup>. Further in, it was held that it is a misjudgement to think in our constitution there are only rights and no duties; there is no conflict between Part III and Part IV of the constitution which are complementary and supplemental to each other<sup>59</sup>.

Finally in *Minerva Mills v Union of India*<sup>60</sup> 1980, it was held that “harmony and balance between the fundamental rights and directive principles is an essential features of the basic structure of the constitution”. The constitutional bench in MirzapurKassab consisting of 7 judges arrived at its decision keeping in mind these developments which had taken place since the *Hanfi case* in 1958.

In Kassab constitutional validity of the Bombay Animal Prservation Act, 1994 was challenged, section 2 of which amended the Bombay Animal Preservation Act, 1954 the effect of which was that was that the slaughter of bull or bullock of any age whatsoever was completely banned. Previously, the ban under this Act extended only to bull or bullock under 16 years of age. Also, there already was a complete ban on the slaughter of cows and its progeny, therefore this point was not under consideration in this case. The Supreme Court held:

*“In the light of the material available in abundance before us, there is no escape from the conclusion that the protection conferred by impugned enactment on cow progeny is needed in the interest of Nation’s economy. Merely because it may cause “inconvenience” or some “dislocation” to the butchers, restriction imposed by the impugned enactment doesnot cease to be in the interest of the general public. The former must yield to the latter”*<sup>61</sup>.

There is a constitutional mandate for bearing in mind the Directive Principles of State policy while judging the reasonableness of the restrictions imposed on Fundamental rights<sup>62</sup>. The courts interpret the constitutional provisions against the social setting of the country so as to show a complete consciousness and deep awareness of the growing requirements of society and the increasing needs of the nation, also the judicial approach should be dynamic rather than the static, pragmatic and not pedantic and elastic rather than rigid.<sup>63</sup> In *State of Kerala v N.M. Thomas and*

<sup>58</sup> I.C. GolakNath and Ors v State of Punjab and Anr 1967 AIR 1643; 1967 SCR (2) 762

<sup>59</sup>C.B.Boarding& Lodging v State of Mysore AIR 1973 SC 1569

<sup>60</sup>Minerva Mills v Union of India AIR 1980 SC 1789

<sup>61</sup> Supra 47

<sup>62</sup> State of Gujarath v MotiKureshiKassab (2005) 8 SCC 534

<sup>63</sup>Pathumma& Others v State of Kerala & Others 1978 AIR 771, 1978 SCR (2) 537

*Ors*<sup>64</sup>, Supreme Court held that “directives thus provide the policy, the guidelines and the end of socio-economic freedom”.

### **CRITICAL ANALYSIS**

In a democracy, where each individual is free to voice his opinion, there are certain debates which at no time can amass a public consensus. Keeping in mind the multiplicity of views and ideals held by persons and the experiences of the past, the debate relating to slaughtering of animals, undoubtedly, falls in this category. It comes as no surprise that the Constituent Assembly, maintaining the sanctity of the cultural diversity of the land, did not pursue a nationwide enactment on the matter. Even today, the demand for a national legislation is as foolish as it is unreasonable, the fulfilment of which in all probabilities will lead to aggravated acts of violence throughout the country. The best alternative so far, as experience suggests has been to leave the issue to the better judgment of the individual states.

Banning of beef is very well justified as far as the humanitarian grounds are concerned. We humans are famous for having a feeling of love and kindness for each other and then why not maintain this unique quality. There is a need for taking this issue as a matter of national interests. The government should try to amend the constitution and include the subject of protection of cattle in the concurrent list to avoid the non-uniformity of the state laws. This does not mean that state laws should be abolished but it should be studied and provisions regarding the penalties, types of animals etc. The rights of all the religious groups should be respected.

Even if the ban is enforced the slaughtering of will continue in secret manner. Illegal killing of animals for meat is perhaps the worst form of death for animal, not to mention the fact that the meat could be unhygienic. If the ban is uphold the sanctity of cows and its welfare, then the object will not be achieved as our economy is growing day by day which will ultimately result in increase in the consumption of milk. This will lead to more cruelty over the cows.

Animal welfare is more important in these situations. Only ban over the slaughtering of the cows will not help in any way. It can be able to develop our empathy towards the cattle to prevent them from suffering from our atrocities. Atrocities start from their birth only. There is a dire need of having a comprehensive regulation on the slaughtering laws, stricter animal welfare laws is needed. All these can be done when we will be having a strong commitment towards our goal.

### **CONCLUDING REMARKS AND RECOMMENDATIONS**

The fact remains that certain sections of the society are discontent with the stand taken by the state legislatures and its approval by the judiciary and see it as infringement on the fundamental rights of the citizens. In a country like India it is practically impossible for a law to satisfy the aspirations of each individual and this is

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<sup>64</sup> State of Kerala v N.M. Thomas and Ors 1976 AIR 490; 1976 SCR (1) 906

where the concept of welfare state pops in. every law formulated has a particular objective and unless this objective frustrates the constitutional fabric itself, it must be understood to be for the welfare of the people. This approach should not be confused, as a famous Utilitarian Jeremy Bentham says “Greatest Happiness of greatest numbers”. Thus the formulation of laws banning the slaughter of cattle in multiple states by our very own representatives and its confirmation by the judicial system is imperative to give essence to the ideal of socialism enshrined in our preamble.

- § The Government of India must enact a Central Legislation for protection of cattle wealth and totally prohibiting its slaughter. The inclusion of the subject of animal husbandry in the state list is not an impossible hurdle to overcome. This issue should be considered as an issue of vital national interest and rising above politics, the Parliament must enact a Constitution amendment to bring the subject in the Concurrent List to enable the parliament to enact the law.
- § The Home Ministry should direct the states to constitute special squad in the police department to check illegal slaughter, illegal transportation within the states and outside the state, particularly in few states as mentioned above. They should be directed to extend full support, co-operation and protection to animal welfare activists. They should also be directed to immediately register FIRs, institute legal cases and ensure their speedy disposal, so that the culprits are punished as per law.
- § In many State Acts there are a number of exemptions from the main provisions imposing complete/ partial ban on slaughter. The exemptions are used more as rule and they very purpose of the legislation gets defeated. Hence any type of exemptions should not be provide in the Act.
- § The Penal provisions in the State laws as well as in the Prevention of Cruelty to Animals Act should be more stringent with higher fines and longer terms of imprisonment. There should also be a provision for automatic review of acquittal orders of acquittals orders of the Lower Courts by a superior court.
- § Temples should not be permitted to auction the cows and calves received as ‘gifts’ or ‘donations’ from devotees.

Finally, the author has put forth all the problems, issues and the solutions and recommendation so that the readers of this paper will have a full knowledge of the provisions that are laid in the Indian Constitution and further it gives the readers a clear and freedom of mind to insight with the knowledge on the debating issue “BEEF BAN”

**“We want to Change, We want to see and We can”**

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## JUSTICE FOR VICTIMS OF ABUSE OF POWER: A CASE STUDY ON VICTIMIZATION OF TRIBALS IN VACHATHI VILLAGE, TAMIL NADU (INDIA)

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### Abstract

*This paper attempts to examine the victimisation of tribals in a remote village called 'Vachathi' in the state of Tamil Nadu at the hands of the state machinery and their long drawn legal battle of 17 years which got them justice. This case is unique because the incident involves state sponsored violence; large number of perpetrators and large number of victims; crime committed ranges from torture, assault, third degree treatments, sexual assaults on children and women; foisting of false cases; destruction of houses, infrastructure and their sources of livelihood ; full fledged support by the State to the perpetrators; obstacles at every stage of the legal battle and the ultimate victory; role of the N.G.Os, media, the community and judiciary.*

**Key Words:** Victims, Rights, Sexual assault, Justice.

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### INTRODUCTION

At the time of the making of the Constitution of India, it was hoped that the Directive Principles would provide a framework within which social change could be progressively brought about. The weaker sections were usually comprised of Scheduled Castes, Scheduled Tribes and Socially and Educationally backward classes. The population of Scheduled Tribes, which constituted about 8 per cent of the 1981



population, was estimated at over 68 million for 1991 or about 8.1 per cent of the total population and as per 2011 census, the total Schedule Caste and Schedule Tribe comprise about 16.6% and 8.6% respectively, of India's population. The special provisions made for Scheduled Castes and Scheduled Tribes have been always viewed as being supplemental to the general provisions in the Plans<sup>1</sup>.

All Five Year Plans have drawn attention to the gaps in development which have continued to persist, in particular, in respect of literacy rates, population below the poverty level and share services and in educational opportunities. For Scheduled Tribes, the rate of literacy rose from 8.53 per cent in 1961 to 16.35 per cent in 1981, currently the literacy rate is 54.34% as per 2011 census. For numbers below the assumed poverty level, in 1987-88 the proportion for Scheduled Tribes 52.6 per cent, compared to the national coverage of 33.4 per cent<sup>2</sup>.

Despite the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, between 1986 and 1990, nearly more than 7000 cases of atrocities were reported against Scheduled Tribes. The actual numbers may be even larger. The Plan has also drawn attention to the adverse effects of large development project in many tribal areas in causing displacement and loss of land as well as to the continued alienation of land to non-tribals. Displacement from land has now become a clear political issue. Earlier the consequences of displacement tended to be ignored and many tribal communities suffered great harm. Alienation of land to non-tribals still occurs under cover of benamis in favour of tribals and, among tribals themselves, those who are economically stronger tend to flourish at the expense of those who are economically weaker.

The injustice meted out to the tribals in India are manifold. Despite making special provisions for their rehabilitation and resettlement, the apathy shown by the bureaucracy had seen that even a negligible percent of such measures never reached them. On the other hand, continuing the colonial policy of intimidation, torture and foisting of false cases against a whole lot of tribal population is on the increase. Ruthlessly suppressing them is part of the strategy adopted by the rulers to subjugate them to their dictates. Unleashing of violence by the armed forces is the order of the day<sup>3</sup>. Apart from destruction of their livelihood the sexual assault against the tribal women is part of the strategy adopted.

Under Article 338-A, a National Commission for Scheduled Tribe was established by the Parliament with the effect on 19.2.2004. The reports made by the Commission are placed before the Parliament along with the action taken by the

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<sup>1</sup> "Constitutional Provisions and position of Dalit Rights", available at [http://shodhganga.inflibnet.ac.in/bitstream/10603/40021/13/13\\_chapter%208.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/40021/13/13_chapter%208.pdf)

<sup>2</sup>ChiramanaVenkateswarlu, "Constitutional provisions and legislations for empowering the weaker sections", Volume II, ISSN – 2320-0073

<sup>3</sup>Justice S. Muralidhar, "The Expectations and challenges of Judicial Enforcement of Social Rights", available at [http://www.delhidistrictcourts.nic.in/ejournals/Social\\_Rights\\_Jurisprudence.pdf](http://www.delhidistrictcourts.nic.in/ejournals/Social_Rights_Jurisprudence.pdf)

government. In case the report relates to the state government, then the reports of the Commission are forwarded to the Governor of the State for appropriate action.

Unless an event involving the tribes receives attention or brought to the notice of the Commission, no steps will be taken to attend to the problems of the tribals. Year after year number of reports are being placed before the Parliament. Notwithstanding the same, several atrocities and state aggression against the tribal goes unnoticed.

The increased number of assaults and few of those cases reaching the Supreme Court of India and in one such case, the cautioning given by the court can be seen below:

*“The injustice done to the tribal people of India is a shameful chapter in our country's history. The tribals were called ‘rakshas’ (demons), ‘asuras’, and what not. They were slaughtered in large numbers, and the survivors and their descendants were degraded, humiliated, and all kinds of atrocities inflicted on them for centuries. They were deprived of their lands, and pushed into forests and hills where they eke out a miserable existence of poverty, illiteracy, disease, etc. And now efforts are being made by some people to deprive them even of their forest and hill land where they are living, and the forest produce on which they survive. Despite this horrible oppression on them, the tribals of India have generally (though not invariably) retained a higher level of ethics than the non-tribals in our country. They normally do not cheat, tell lies, and do other misdeeds which many non-tribals do. They are generally superior in character to the non-tribals. It is time now to undo the historical injustice to them.”<sup>4</sup>*

In some cases, various Tribal Welfare groups, Non-governmental organisations and Human Rights groups also achieve some significant success in their endeavour which brings some ameliorative measures to the benefit of the tribals. The assault against the tribals including sexual assault against tribal women in the Vachathi village (South India) and the subsequent intervention by the Tamil +Nadu tribal Association and Communist Party of India (Marxist) a registered political party with their prolonged legal battle if seen in the larger context will also bring the plight of the tribals in India in general. Thus the victimisation of “Vachathi Village” tribals will be an important study and identify the problems faced by the tribals in India in general.

#### **VACHATHI VIOLENCE:**

The police team spread a falsehood as though, the village people attacked them when they raided to recover smuggled sandal woods. The next day, on 20-06-1992, a posse of policemen and forest guards descended on the village and attacked the innocent

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<sup>4</sup>Supreme Court Report [2011] 1 S.C.R,  
[http://www.sci.gov.in/pdf/SupremeCourtReport/2011\\_v1\\_pi.pdf](http://www.sci.gov.in/pdf/SupremeCourtReport/2011_v1_pi.pdf)

people in a fiendish manner with deadly weapons. Men took asylum in the deep forest where the police cannot reach. This enraged the police and they showed their anger on aged people, women and children. They assaulted the women and dragged them by clutching their hair to the banyan tree which is at the centre of the village. They damaged every house in the village from roof top to the floor. They also damaged the people's essential instruments like sickle and knife which formed the basis for their livelihood. They looted the village people's money and valuables kept inside the house. They took away nearly 300-400 goats. They had stolen their motors and pump sets and poured oil in the drinking water well. The forest officers picked and chose some 18 girls including a 12 year girl not attaining puberty and took them in a police van to the nearby lake area and brutally gang raped those girls. All the 18 girls were aged between 13-19. Three of them were married. The victims shared their nightmarish experiences with the researchers. They were almost below 18. They were gang raped and assaulted. One forest ranger put scorpion inside the skirt of the victim. Then all the victims were ordered to board the police vehicle in which they arrived. Many of them were profusely bleeding and they couldn't walk.

All of them were taken to the Forest Range Office Arur by crossing their village. One of the girl shouted for help, consequently the remaining village people gathered and tried to help her. In spite of the hard try to help out the girls, the forest officer used third degree torture methods. They sexually abused women the whole night. They further asked the women to beat the village President Perumal with broom stick. Many women who could not bear the torture, beat the President with broom sticks. He suffered bleeding injuries on such forcible assaults. Further they asked the women to undress him and also asked him to do the vice versa. But both of them refused to strip others' dresses and for that also they were tortured. When the children asked for water the police instructed their mother's to pass urine and quench their children's thirst. Some of the goats captured were cooked and presented as a feast to the forest and police officers. They mixed the remaining eatables in their plates and forced the detainees to eat by pushing their head down into the food. The police then remanded 90 women, 28 children and 15 men to judicial custody in Salem Sub Jail. This included a pregnant women who delivered a baby in the jail which died after a few days<sup>5</sup>.

### **STATE'S SUPPRESSION AND DENIAL**

This atrocity was not known to the outside world till 7th July. The Tamil Nadu Tribals Association which was formed on February 6th, 1992 for the first time as a State level organisation for the protection of tribal people's rights in Tamil Nadu took up the issue. They went to the village and gathered information, interviewed the victims who were in jail. They organised the fear stricken village men and women, conducted demonstrations. But to their utter shock, the State Government right from the District Collector to the state chief minister totally denied such incident. The successive

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<sup>5</sup>Nirmala Rani Umanath, "Victims in Criminal Justice System", ISBN:978-93-5035-810-8, Lexis Nexis Delhi.

reports of the government officials stated that Vatchathi residents threw such allegations to attribute malice on the State Govt as well as to suppress smuggling of sandalwood and they themselves damaged their own houses and properties. The then State Government was very adamant in its stand till the last and stood by the side of the perpetrators of violence. In such a hostile atmosphere, how could a victim of abuse of power get justice? How the victims could be protected from the onslaughts of the perpetrators. It was a long March.

### **RESEARCH OBJECTIVES**

- To study how the tribal people are perceived in an orthodoxical manner.
- To study their socio economic background and conditions of life.
- To analyse the situations of how they are being exploited and subjected to violence.
- To analyse the hardship and challenges faced by the tribal in getting Justice;
- To study the role of democratic organisations and judiciary.
- To analyse the obstacles that are faced by the victim at every stage of the legal battle.

### **RESEARCH METHODOLOGY**

This study and research involves the collection of primary datas which involves oral interviews with the victims, gram leaders, N.G.Os and the officials of the Tribal Welfare Organisation and the observation of trial. These primary datas would be helpful in analysing the real trauma faced by the victims in getting justice and what are the hindrances that make them to linger for getting justice. It would be also helpful in concluding on the hardship and challenges faced by the tribal in getting Justice.

The secondary source involves collection of necessary materials from authenticated books, online articles and journals. This would be helpful in understanding the subject matter of socio-economic and democratic conditions of the tribal people and also the role of judiciary and other necessary organisation in helping out these people to get their justice.

### **BACKGROUND OF THE STUDY**

Vachathi is a tiny hamlet unknown to majority of population till 1992 and it is situated at the foothills of Sitheri Mountain in Dharmapuri district of Tamil Nadu, about 400 kilometres away from Chennai<sup>6</sup>, the people were tribals, Dalits and other lower sections of the society. The total population of Vachathi village was 655 (290 families) and 183 families belong to "Malayali" a scheduled tribe which has the

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<sup>6</sup>Available at, Indian Village Directory, <https://villageinfo.in/tamil-nadu/dharmapuri/pappireddipatti/sitteri.html>

highest population among other tribes in Tamil Nadu. These tribals were engaged in agriculture and 75% of them own lands<sup>7</sup>.

“Sitheri hill’s Sandal Wood” is the best in Asia these people actually prevented the forest and revenue officials from entering the hamlet. These sandal woods in that region are smuggled to Chennai port and exported to other countries despite hundreds of check post throughout Tamil Nadu. The Sandal wood mafia is a strong network which consists of anti-social elements aided by forest, revenue police officers and their subordinates and well assisted by politicians for cutting and transporting the woods, some of the village people will be employed as labourers, but whenever smuggling issue arises, these poor tribals will be branded as smugglers and thrown into jails<sup>8</sup>.

From 1990 onwards, Sandal wood smuggling in Vachathi reached its peak. Forest rangers with the help of other Government officials, police and politicians minted huge money by way of smuggling. They also used some local villagers as coolies for cutting and manually transporting and loading the wood on to lorries and trucks. The village headman and other residents gave memorandums to the bureaucrats. After repeated representations, the District Administration tightened the noose. The smugglers who cut the trees used to hide the sandal wood logs inside the villages and also in the river beds. Due to the representations of village people, the district administration started watching the movements. Therefore the smugglers could not remove hidden sandalwood logs and transport them to their destinations.

On 19-06-1992, a team of police and forest officials came and enquired one ChinnaPerumal about the wooden logs. When he started telling about the place and also about the coolie works, another group of forest and police officials who had a hand in smuggling assaulted ChinnaPerumal. At his cry for help the village people gathered to save him from the assault. This created a scuffle between the people and the police which resulted in injuries to both the groups. The police and forest guards left the place leaving behind their injured colleague. Village people gave first aid to him and admitted him in Harur Government Hospital<sup>9</sup>.

### **ROAD TO JUSTICE:**

The Tami Nadu Tribals Association (hereinafter called the association) a left oriented organisation raised the issues in various platforms to set the criminal law in motion. But the State refused to register even a FIR. A fact finding team of democratic and left oriented organisations and the Communist Party of India (Marxist) visited the village and confirmed the allegations. People’s Union of Civil Liberty, a human rights

<sup>7</sup>Dorairaj.S, “Justice for Vachathi”, Front Line, Volume 28-Issue 22:: Oct.22-Nov., available at <http://www.frontline.in/static/html/fl2822/stories/20111104282203200.htm>

<sup>8</sup>Gurucharan Das, “True Incident of Vachathi Raid”, available at <https://vachathi.wordpress.com/2012/01/02/true-incident-of-vachathi-raid/>

<sup>9</sup>BBC News, “Indian police kill 20 suspected red sandalwood smugglers”, available at <http://www.bbc.com/news/world-asia-india-32200188>

organisation also led another fact finding team and confirmed the allegations. The issue was exposed in the media. The Association took legal steps to release the victims who were in prison. Then the association approached the Madras High Court for transferring the investigation to CBI into the atrocities. The case was dismissed in limbo on the ground that it is unbelievable that educated persons, government servants that too higher officials would indulge in committing such atrocities. It is a classic example of orthodoxy prevailing in the minds of even judicial officers. Then the association went on appeal to Supreme Court which directed the High Court to take cognisance. Meanwhile this matter was brought to the notice of the National Commission for SC&ST which is a statutory body. Ms.Bhamathi, Director of National SC/ST Association visited the village and conducted an enquiry and filed her report. The report filed by the officer made startling revelations about the conduct and action done by the forest officials against the innocent tribals. Various left oriented mass organisations provided assistance to the vachathi people for sustain their livelihood. The High Court then entrusted the investigation with Central Bureau of Investigation. Aggrieved by the order of the High Court, shamelessly the State government went on an appeal before a division bench against this order. Notwithstanding the ferocious defence put up by the state by defending the culprits, the division bench dismissed the appeal filed by the state. Undaunted state government went before the Supreme Court with a Special Leave Petition which was also dismissed by the Supreme Court. This will show to what extent the state will go to defend the criminal acts of its officers in uniform.

Only after this, a First Information Report which is a basic step in the crime prosecution was registered with regard to the atrocities. The CBI investigated the matter once again unravelled the conduct of the forest officials and police in harming the local tribes and committing atrocities against them. A portion of the report quoted by the press will show the real face of guilty officers:-

*"The CBI's report exposed the nexus between certain personnel of the Forest Department and the smugglers. Pointing out that Vachathi, owing to its strategic location, had been the starting point for transportation of sandalwood procured illegally from the Sitheri hill range, the report said, "It appears some of the field staff of the Forest Department were hand in glove with notorious smugglers and their agents in Vachathi and nearby villages.*

*In fact, investigation has revealed that there was a chit/token system in vogue to ensure smooth operation of illegal felling, transportation, concealment in riverbeds, patta lands and nallahs for some time, before loading and ferrying the sandalwood to final destinations." It added: "Going by the living standards and the economic status of the tribals of Vachathi village as a whole, it does not seem that they are the main smugglers themselves. Official records and discreet information collected during investigation reveal that the villagers are doing only insignificant peripheral jobs.... There was also some*

*discontentment in the matter of sharing of spoils by some of the corrupt elements in the [Forest] Department.”<sup>10</sup>*

The large number of officials/Accused involved in the offence namely 256 persons adopted all kinds of delay tactics in protracting the trial. During Test identification parade, they became unruly and the judicial officer aborted the process considering the safety of the victims. The high court again intervened and warned the state government to co-operate. The venue was changed to Salem central prison to be conducted by a District Judge. Even the victims were attacked while going to attend the parade. Inspire of all the odds and obstacles, the victims including the rape victims identified their aggressors. Again the tribal association approached the High Court for compensation and constitution of a special court. Even after the court granted compensation, the state government delayed the process for years. After a protracted trial, all the accused charged namely 215 accused(54 died in the course of trial) were convicted and sentenced to jail terms ranging from one year to 17 years, by the special court on 29th September 2011. Out of the 215, 126 belonged to forest department including 4 IFS officers, 84 belonged police department and 5 belonged to revenue department. After the judgement, again high court was approached and a direction was issued to pay compensation as per statute. Out of 3 crores approximately, more than 80% of the amount was paid to the victims.

It must be noted that as a counterblast to the complaint given by the tribals against the police and the forest officials, false cases were registered against large number of tribals. This was done to continuously harass them and also to stubborn those witnesses from speaking against the officials in the case registered against them. With the help of the Tamil Nadu Tribal Association, the innocent tribals moved the High Court and the same was quashed.

## **CONCLUSION**

This case saw the culmination of a two-decade long fight for justice by uneducated, impoverished tribals against the might of the police, forest officials and the local administration - that ended with the conviction of 215 officials with sentences ranging from one year to 17 years after they were held guilty of torture, unlawful restraint, misuse of office, looting and rape.

However, the long ordeal of over two decades will break the willpower of anyone. But thanks to the wholehearted support extended by their mass organisation and the solidarity shown by human rights activists as well as the spirited legal battle waged by their lawyers brought the incident to the centre stage to the extent that even the international press did not fail to cover the event.

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<sup>10</sup>Dorairaj.S, “Justice for Vachathi”, Front Line, Volume 28-Issue 22:: Oct.22-Nov., available at <http://www.frontline.in/static/html/fl2822/stories/20111104282203200.htm>

UN declaration of Basic Principles of Justice for victims of crime and Abuse of Power 1985 stated that States should consider incorporating into the national law norms prescribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support. States should periodically review existing legislation and practices and should enact and enforce new ones, if necessary and also promote policies and mechanisms for the prevention of such abuses. But India is yet to enact a comprehensive legislation to enforce victims' rights.

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## DOWRY DEATH IN INDIA - A SOCIOLOGICAL PERSPECTIVE

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### Abstract

*The unnatural deaths of married women amongst the total female deaths have shown an increasing trend in Indian society during the recent years. These unnatural deaths may be suicidal, homicidal or accidental, but suicidal deaths are most common. In India, dowry is a persistent evil, even among educated societies, there is no escape from the brutality of in-laws if expectations are not met and some of these oppressed young women choose to commit suicide, either by burning, poisoning or by some other means. The present project titled "Dowry death in India" attempts to understand the system of dowry and its implication on family as an institution.*

**Key Words:** Dowry, laws, Society, Death rates.

### INTRODUCTION

***"Any Young Man Who Makes Dowry a Condition for Marriage Discredits His Education and His Country and Dishonours Woman hood. Young Men Who Sail Their Figures with Such ill-gotten Gold Should Be Excommunicated from Society".***

· Mahatma Gandhi

Dowry Death in newly married brides is a burning problem of Southern India. The objective of the current study is focused on the marriage groups. This prospective study was carried out on 38 cases in 2015. Results revealed that majority of the victims 83% were young aged between 18 to 26 years, childless 65.7% and mostly died within 4 years of marriage 77.2% about 80% of the victims were illiterate 53%,

house wives of rural background 62.9% and from middle socio-economic group 81%. Husbands alone or along with in laws 75.8% and joint family 86% were mainly responsible for death. The common cause of death implicated are hanging, burning with kerosene and poisoning. Mostly the place of occurrence was in-laws house. Suicidal deaths accounted in 57% and the rest being homicide.

### **ORIGIN OF DOWRY**

The system of dowry prevalent in India is not of a recent origin. In the early marriage system that existed in the medieval India had, some considerations were made to be offered to the father or the relatives of the bride, ***"either in the form of the exchange of pride for bride, or of service, or of the giving of property of some kind or other."***

In Vedic period, "kanyadan – the practising of gifting a bride to groom evolved and it is existing only as a meritorious act or ceremony. Later as stipulated in the Dharmasasthra, kanyadan is a meritorious act and it is not complete until a bridegroom is given a Dakshina while performing and honouring the ceremony of kanyadan. During kanyadan form of marriage, the bridegroom has to be given something in cash or kind which constitute Varadakshina. Thus kanyadan form of marriage became associated with Varadakshina i.e., the cash or gifts in kind to be paid by the parents or guardian of the bride to the bridegroom. Thus Dakshina or Varadakshina was offered out of affection and did not constitute any kind of compulsion or obligation or consideration for the marriage. It was a voluntary act or practise followed in those days to comply with the stipulations enjoined in Dharmasasthra without any coercive overtone.

However, in the course of time, the voluntary element associated with Varadakshina during kanyadan marriage has disappeared and the coercive element has crept in. It has taken deep roots not only in the marriage ceremony but also extended to the post-marital relationship. Originally intended as a token Dakshin for the bridegroom has now gone out of propositions and has assumed the modern nomenclature 'Dowry'. Considering its ramifications and the impact it created in the society, the dowry system has grown into a greedy monster, which is constantly looking out for hapless preys especially from the feminine gender.

There exist 8 kinds of marriage in which 3 determine the dowry form of marriage namely Marriage by Exchange, Marriage by Present, Marriage by Return property.

· **Marriage by Exchange**

The early marriage system was in the form of marriage by exchange. For example “If in each of two families there is an unmarried son and an unmarried daughter, they frequently arrange a mutual double marriage without any payments”.

· **Marriage by Present**

In some countries there is no exchange or service for getting marries, but the bridegroom will “offer a small present to his future father in law, who in return, gives his objects which remain her personal property.

· **Marriage by Return property**

When the bride groom announces his approaching marriage to his father, the latter takes one or more valuables to the bride’s family, but “after this the bride’s father gives a return present, probably of the same kind and values and also an equivalent amount of food”. The return gift may take the shape of a dowry given to the bride by her father or parents or other relatives but also directly or indirectly benefiting her husband. The dowry of then consists of some food, clothes or ornaments, household goods, other objects or a certain number of domestic animals.

**DOWRY SYSTEM IN MEDIEVAL INDIA**

In the ancient time the dowry was not a forced to system in existence. But it was given by the bride’s family to show their love and concern. But in the medieval time, the bride’s family was forced to give dowry because of their bridegroom’s family expectation and completion.

The famous sociologist, **M.N Srinivasa** points out that “the richer and higher strata of people in the second quarter of the 20<sup>th</sup> century paid huge sums by way of dowry to obtain desirable grooms.

In medieval times the dowry system comes into vague because of pre-puberty marriages. To secure a desirable match, the father of the girl often offered attractive encouragements to the prospective son in law to persuade him to accept his daughter within pre-puberty period. Since, the daughter was denied the right of inheritance the phenomenon also led to rigidity of custom of dowry among propertied class.

**DOWRY IN PRESENT TIME**

Today marriage has become an occasion to demand and a chance to accumulate. The rate of dowry varies from caste to caste and mostly depends upon the groom’s accomplishment, family status and other attainments such as education, employment, wealth, and other material acquisitions. In this ugly market of marriage a cut throat completion goes on and dump girls are being freely traded as chattels or cattle’s. Almost thought the length and breadth of the country the negotiation have become direct and open. Today, every bit of consumer goods are demanded as into dowry like T.V set, radios, watches, households furniture and even a car.

## CONCLUSION

Though in the beginning the word dowry was not used in the marriages, gifts were exchanged as a symbol of love, prestige. The Indian term for dowry is widened which means that the bride herself gets jewellery and cloths at the time of her marriage. People used to give and take dowry due to social custom, traditions, and pressures of the caste system. Dowry system did not start as an impediment to a daughter's marriage in ancient times. But in the medieval time the bride's family was forced to give dowry because of the bridegroom's family expectations and compulsion. Today almost throughout the length and breadth of the country the dowry negotiations have become direct and open.

- Ø **VEDIC PERIOD – Dowry was an act of reciprocation/ gratitude.**
- Ø **MEDIEVAL PERIOD – Act of compulsion.**
- Ø **MODERN PERIOD – Act of compulsion through negotiation.**

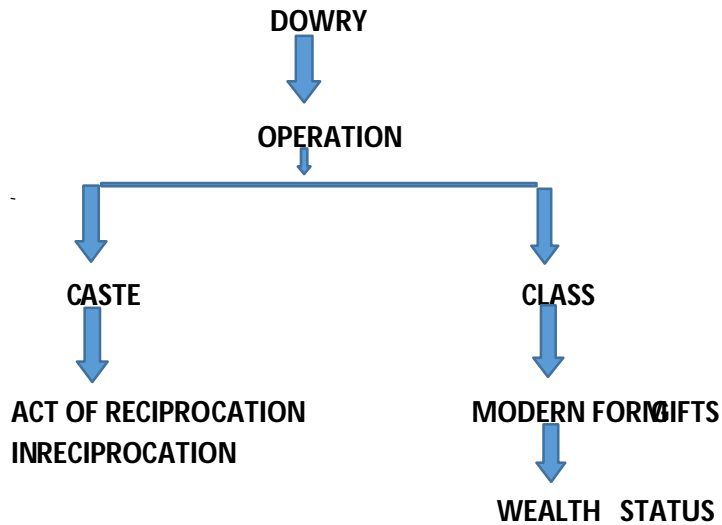
## DOWRY A SOCIOLOGICAL VIEW

Dowry is an operation/ task which is performed by bride family with sufficient requirement put forth by groom's family in order to establish their class and caste position in this competitive. So further the operation can be classified into two broader modes namely class and caste.

Dowry on one hand is a caste oriented where the reciprocation process takes place. But to determine their caste they perform some of the obligations namely rituals/ social/ specific obligation.

Dowry on the other hand is also class oriented where modern gifts become puppet in the hands of the bride's family and the act of reciprocation is followed. This act of reciprocation is performed to determine the wealth status and to show up their class position they belong to.

Both the obligations are too indemnifying situation where in the first case, the tradition are followed such as rituals, social and specific obligation. In this it limits to the class beliefs. For example each caste will have its own belief, for example after the



marriage ceremony got over the bride family has a belief in calling all their relatives and arrange food especially for them is one of the caste obligation and another belief is after the marriage gets over the couple is advised to go to their traditional temple is an another belief, so there are so many beliefs and obligations are performed in the caste. But it limits to some people and do not over proud your wealth and status. Even if you belong to capitalist like Ambani or a petty shop owner (working class) there will always a significance of caste obligations imposed on the particular person.

On the other hand class is one of the modern practise say a status which glorifies your wealth and money. Caste limits to some point of time but there is no limit to class and it signifies the person/ family their wealth money etc. So that the status of the man can be looked up in different ways.

Nowadays people are more oriented to class base concept even to they perform a minor caste obligations to explore/ outcaste their glory and since it is not our social obligation but still we try to accommodate to the class perspective.

## **RITUALS/ SOCIAL OBLIGATION**

### **IN SPECIFIC**

#### **Ø PRESSURE OF THE CASTE SYSTEM**

Caste is largely static, exclusive social class membership which is determined by birth and involves particular customary restrictions and privileged. Among Hindu marriage in the same caste and sub caste has been prescribed by the social and religious practises with the results that choice of selecting a mate is always restricted. "This results in the scarcity of young boys who have high salaried jobs or promising career in the profession. They become 'scare commodities' and their parents demand high

amount of money from the girl's parents to accept her as their daughter in laws as if girls are chattel for which the bargain to be made".

### Ø **RISING OF PRICES**

The pressure for larger dowries is due to "The general rise in prices and the current obsession with gold and silver, the prices of which are rising almost every day". When the groom's family sees the situation of the economy they are tempted to demand dowry from the bride's family in order to face economic crises. Even though there is an increase in the prices families offer to give dowry because to maintain social status.

### Ø **FALSE NOTATION OF SOCIAL STATUS/ FALSE PRESTIGE**

A few people give more dowries just to exhibit their high social and economic status.

### **DOWRY DEATHS AND LEGAL MEASURES IN INDIA**

Dowry death in India frequently take the form of spectacular "bride burnings". Sometimes they are murders of a daughter-in-law or husband. While burning the bride with cooking kerosene is common and there are many genuine accidents, dowry deaths are so frequently identified as "cooking accidents" that the phrase "cooking accident" is seen as a understatement for dowry deaths by women's groups. And because crimes that results in dowry deaths are committed within the home, by family members, with no outside witnesses, they are virtually impossible to prove, particularly if they are deaths by burning. In those cases that are not labelled as an "accidents" but rather are suspected to be murders and suicides, the police tend to choose the option that stigmatizes the women and does not involve confronting her husband or in-laws. Whether they are suicides or murders, dowry death usually occur after the woman has experienced extreme harassment by her in-laws and husbands including demands for the payment of more and more dowry by her family. While dowry is illegal in India, it continues to grow as do the deaths associate and with it and they continue to increase among those that are not the poorest but among those with middle incomes. The dowry deaths have been widely published in India in the past several years, it was prior to that basically a hidden issue. It has been shocking for many Indians to realize that women's from some of their well-off families were experiencing problems of such intensity that they would either kill themselves or be murdered by their husbands or in-laws. Increasingly women who have been abused have had the courage to go to women's group or the police.

According to the official records, 403 dowry murders occurred in the capital city of New Delhi between 2013 to 2015, but women's organizations collected data on about 256 cases in 2014 alone. Some of these missing data's occur because police do not register many dowry death cases or make thorough investigations and because some of the cases are covered up by the families. In New Delhi there were only 16 convictions out of 143 cases of dowry death over two and half years and most have involved long appeals.

## **THEORITICAL FRAME WORK BASED ON MARXIST INTREPRETATION**

The struggle between patterns of materialism and idealism continues to be at the core of all fields concerned with human behaviour. While idealist theories look to attitudes, beliefs, and other mental phenomena for causes of social pattern, materialist approaches explain such social patterns by examining underlying material circumstances particularly relation of production. Relationship of production determine their social status so to achieve the higher social status, dowry as a tool used by my families to move up in the social ladder.

Although cultural materialism, it is basically used as a broad ecological frame work with which to explain socio-cultural patterns. Many of its practitioners including those who identify themselves as cultural materialists and dialectical materialists would not acknowledge themselves as sharing a perspective but instead focus on their differences.

The importance of changes on the individual level in resolving problems. Since these approaches tend to occupy rather than helping people in understanding and organizing to change the social forces that control them, they are part of the "Mystification" which Karl Marx understood perpetuates the status quo. To look for the cause of dowry deaths primarily in the personalities of the men and their families who kill these innocent and careless women's or in the personalities of the women who commit suicide would be absurd. The Dowry deaths are occurred from a materialistic perspective, they are basically caused by social pressures, including economic ones that are part of the complicated web of hierarchical relationships that tie together and to the rest of the world. Like poverty and other social problems, Dowry deaths could be relieved or even stopped if such pressures were reduced or eliminated.

These hierarchical relationships, including the widening of gap between the rich and the poor's the intensification of the stratification of men and women. These hierarchical relationships, in associations with the larger population base have also made the competition for resources as intense in India as anywhere in the world. Since the population is increasing and this resulted in the demand for the product. So to achieve and to get the product to show off their class position one of the means is considered to be dowry.

**"This dowry death can be only understood within the context of relationship of production by the way of the materialistic perspective"**

While relations of production have been defined by Karl Marx. He proposed that they are "the social relations, society, and specifically a society at a definite stage of historical development". In broad theoretical terms, there are two major kinds of Relations of production:



1. Egalitarian (Caste).
2. Class based Egalitarian.

In all states, including both pre capitalist and capitalist, the hierarchical or class-based relations of production are at the centre of materialist analysis. Dowry deaths in India are primarily a result basic Relations of production with regard to three major areas:

1. India's subordinate relations or dependency in the capitalist world market economy
2. The class structure which concentrate control of basic economic resources in the hands of a small proportion of the population
3. The subordinate and generally dependent position of women in the control of resources.

### **CASTE SYSTEM**

Today, the world is full of acquiring wealth and gaining more money to up in the social ladder to acquire the higher status. While capitalism has made more opportunities available to move upward, using whatever means they can devise including dowry demands to increase their resources.

The famous sociologist M.N. Srinivas in 1967 has pointed out that upward mobility in India involves the process of "Sanskritisation" imitating patterns of the upper group's practises and following the same procedure to move up in the sociological ladder. One of the procedure is the demanding dowry if the bride did not satisfy, She is been put into death by burning normally called as Dowry-death or Bride- burning.

While dowry demands and deaths occur among those trying to move upward at middle and upper middle income levels. That is where women's are being especially pressured to maintain or increase their economically more successful. While dowry demands and death occurs among people at many income levels, they appear to be concentrated among those trying to move upward at middle income levels.

Like sati Dowry deaths in general are reflections of women's dependent status in India. For many women, escape from oppressive patterns does not seen possible by external avenues of the society through death. This is frequently true even for well-educated and employed women who theoretically should be able to support themselves. But these women usually do not have control over their wages. Their husbands and their in-laws control them economically and for middle class women,

divorce or even separation is not perceived to be an option that can be used to escape, for it would mean ostracism from their families and castes.

There is one more called as bride wealth. The difference between bride wealth and dowry further clarify how dowry death have been affected by changes in relations of production. Bride wealth or bride price involves payments from the groom's family to the bride's family and usually reflects more valued and independent relations of women in production. The payments of dowry from the bride's family to the groom's family tends to reflect more dependent relations of production.

## **CONCLUSION**

Dowry deaths in India are a consequence of the intense competitive expansion of capitalism with in the intricate web of hierarchical relations- the widening gap between the rich and the poor, the intensification of gender stratification as well as India's subordinate status in the world market. In this extremely competitive environment dowry demands are one of the method of attempting upward mobility in the social and economic ladder. Dowry demands are just one of the attempts for men to raise their status at expense of women. The overall effect of increasing dowry pattern and even female privacy in groups attempting upward mobility in India is to make greater opportunity available for men by reducing the probability of competition from women.

## **MEASURES TAKEN BY THE GOVERNMENT**

An attempt to control dowry through the mechanism of law dated as far back as the 'sind letiDeti act of 1939. The governments in some state like Andhra Pradesh, Kerala, Punjab, and Bihar passed anti-dowry legislation. After Independence,"Bihar was the first state to embark on legal restrictions on dowry by enacting the Bihar dowry restrictions act 1950. In 1958 the state of Andhra Pradesh enacted local, dowry prohibition act. The enactments of both Bihar and Andhra Pradesh were later repealed in 1961 by the central legislation on the subject. In order to combat this age old practise, the first uniform law enacted by the central legislature was the dowry prohibition act, 1961".

## **DOWRY PROHIBITION ACT 1961**

If any person after the commencement of the act, gives or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry whichever is more: provided that the court may for adequate and special reasons to be recorded in the judgement, impose a sentence of imprisonment for a term of less than five years.

## **SOCIOLOGY AND LAW**

Since we belong to or live in a relationship based society. We don't give much preference to the contract that prevails in the society. The contractual obligation is injected in the social relationship as social capital comes into play in the life of the relationship based society.

There is always no proof of burden for dowry. Since there is an absence in Law of evidence and it is difficult to prove. This implies and leads us to a valid point stating that there is no importance of dowry prohibition act 1961 and the provision to prove is still under suspension, the evidence in such cases is very vague and difficult, so the question is that the law that put barriers to dowry lenders is still suitable is the one of the big question mark that still hangs above the head.

So the author would like to conclude by saying that the recent judgement passed by justice Selvam stating that the money that is lend for the business purpose would not amount to Dowry, if this judgement comes into play, there prevails another means by which the lawyers who appeal for the respondent or the petitioner will surely use this as an precedent case and prove that the money that was asked is only for the business investment. But the burden of proof is under suspension.

## **RECENT STATISTICAL ANALYSIS ON CASES OF DOWRY DEATHS AND CRUELTY**

As per the National Crime Records Bureau(NCRB) data, a total number of 1,06,527; 1,18,866 and 1,22,877 cases have been registered under section 498-A IPC (cruelty by husbands or his relatives) during 2012, 2013 and 2014 respectively. Similarly a total number of 8,233; 8,083; 8,455 cases were registered under section 304 B (Dowry Deaths) of the Indian Penal Code in the country during 2012, 2013, 2014 respectively.

The government of India regularly conducts awareness generation programmes and publicity campaign on various laws relating to women including Dowry death prohibition act 1961 through workshops, fairs, cultural programmes, seminars, training programmes etc. Advertisements are regularly brought out in the print and electronic media to create awareness on laws relating to rights of women. The Ministry reviews with the states time to time for effective implementation of the Dowry Prohibition Act 1961.

The highest number of dowry deaths during the last three years consecutively have been reported from the state of Uttar Pradesh followed by Bihar. As per the National Crime Bureau data, Uttar Pradesh reported 2,244 dowry deaths under section 304 B of the IPC in 2012, 2335 and 2469 dowry deaths in 2013 and 2014 respectively. The states of West Bengal, Rajasthan and Andhra Pradesh reported among the highest cases of cruelty by husband or his relatives during last three years.

## **SOCIOLOGICAL ANALYSIS OF MARRIAGE AND DOWRY IN INDIA**

Marriage, for ages now, has been institutionalised and dowry is a huge part of this institution. This concept of dowry, however, has a lot of downsides and the cons seriously outweigh the pros of the dowry system. Dowry has been the primary cause of the deaths of many women in India, and it is sad to note that even though we claim to be advancing in many facets of life, the ugly side of dowry is still prevalent even in today's so-called 'modern society'.

Husband and in-laws still compel the woman to get the remaining dowry promised by her family and in case that doesn't happen she is ill-treated- either physical or mental trauma/ abuse. Although the law has several legislations related to dowry deaths, to prove that the woman's death was because of torture for dowry, is something that is very difficult to prove. In most cases, the victim is dead and so the accused change the reason behind her death/ suicide, thereby escaping from all liabilities. There is no clear evidence to prove so that the accused the death. This can be attributed to the fact that marriage, has made a transition from being a semi-feudal institution or a social relationship to become more contractual.

We live in political economic scenario where people's life are dictated by class pride and class expectations. Class mobility has taken such a huge significance in people's life that the class expectations have risen exorbitantly and irrationally. And people are using marriage and dowry as a means to achieve the end, which is class escalation. So when it comes down to the bride and her family not being able to provide the promised dowry, it is seen as a road block to achieving higher class status and thus results in the bride being taunted to such an extent that she prefers ending her life to living in this hell hole.

The lack of proof required to prove dowry death has serious repercussions and one of those is that women can't achieve a status that is equal to that of men and hence their respect in general goes down drastically. To this effect, there exists a certain prejudice against women when it comes to deciding cases related to dowry deaths, with the society and the courts preferring to hear only the side of the men rather than the victim's, simply because the victim is dead and onus of proof lies on her parents.

To add to this mess, in case the couple happen to have children, a girl child in particular, they use this reason against her to demand more dowry, claiming maintenance and to bring balance to their marriage. This emotional blackmail creates a double jeopardy on the part of the woman. The motive behind a murder is apparent and hence can easily be proved. However, this is not the case for dowry deaths, were most often, it is a case of self-induced death or suicide by the victim. To prove that her husband and his family caused her to take the ultimate step is extremely difficult because the husband and his family guard their interests and hence, the onus of proof lies on the dead woman's family who are very often left broken because of the death of their daughter.

The following questions remain unanswered when it comes to dowry deaths:

- The victim, unable to cope with the crass injustice anymore, resorts to committing suicide. As a consequence the real reason behind her death is hidden under the pretext of her fickle mindedness and the facts of how she was tortured for dowry is buried within the family.
- Furthermore, the Law of Evidence lacks any clear section which throws light on the exact legislation related to dowry deaths. Although the legal system does elaborate on dowry harassment, it remains mute when it comes to dowry deaths.
- The second question is marriage, as far as India is concerned is matter of great prestige and is a way of showing off one's class status. Therefore there is an ever increasing burden on the part of the bride and her family. Constantly increasing class expectations results in constantly increasing dowry related harassment and hence dowry deaths.
- All these problems have to be answered first by the police officials because they serve as the primary and direct link between the victims and the Courts of justice. Therefore it is their duty to make an effort to search and find the relevant evidence required to convict the accused of their wrongdoing. To conclude by saying;

**"Only when the expectations get reduced the Bride burning also get reduced"**  
**"We have to change We want to see and We can"**

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