

THE RIGHTS

Vol-II

Editor

Dr. Viktor Savchenko



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Foreword

First of all, I thank esteemed Dr. Viktor Savchenko for sparing his valuable time for editing this scholarly book. I appreciate his high intellect that his editorial paper discusses the very important and academically complicated topic Disproportionality of the Rights of a Man and a Woman in the Context of Giving Consent to Artificial Termination of Pregnancy: Introduction to Current Issues. He has initiated a topic on the desk of global researchers that needs urgent attention for redressal to form a better futuristic society.

Addressing war as a socio-political phenomenon is a difficult subject of study, especially in the context of globalization and the present technologically developed era. We are elated for conquering space and talking about galaxies. However, on earth, the future is grim and humanity is in danger because of the war that the world had never wanted after two world wars. No doubt different civilizations have witnessed wars; thus, it is not wrong to say war is a socio-political phenomenon. But this phenomenon mustn't be a threat to humanity, especially children, who are the future of the world. I appreciate Prof. Zavalna and co-authors for their research on the phenomena in 'Moral Approach and Scientific Approach'. Dr. Prashna has perfectly dealt with changing paradigm of war and its philosophical aspects in her highly scholarly paper Are War Really "JUST": Appraising the Principles of 'War' under International Humanitarian Laws.

Food security in peacetime refers to nutritional food security, but during conflict time it refers to survival food

security. The research paper of Mr. Biswajit is an ever-demanding topic because the world is unparallel when we address the problem of food security. As a gender theorist, I evaluate the research paper. The problem of gender disparity in higher judiciary: an analysis is highly important. Mr. Ranjan and his co-author discussed the problem in India that needs an urgent address. It is true that in the judiciary machinery there are a trifle amount of female judges that underline Indian women are still victims of the patriarchal system that underscores women in kitchen culture.

I appreciate Ms. Komal for contributing a very important topic on recent legal reforms on organ donation. The paper will give an insight to scholars doing research in this area. We call mother nature; therefore, women's role in protecting women is always more important than that of men in not only the feministic approach but also the humanitarian approach. Dr. Sushmita has clearly dealt with the women's environmental rights.

The Muslim population is the largest in the world, despite the fact that there is less Muslim women's participation in politics. I specially asked Dr. Nayeem to contribute an article on this topic, which is rarely found in global scholars' front. I give my best compliment for her thorough discussion of Muslim women's participation in India with proper data.

Best Wishes

Dr. Yadam Ram Kumar

Founder and Director

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Disproportionality of the Rights of a Man and a Woman in the Context of Giving Consent to Artificial Termination of Pregnancy: Introduction to Current Issues

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The right to equality and the prohibition of discrimination have been enshrined in the legislation of many countries, reflecting the paradigms of modern society and the vector of its development. Today, the rights of national minorities, women, LGBT+, etc., are being actively discussed. However, in some cases, people still do not have equal rights, as can be seen in the disproportionate rights of men and women in the context of giving consent to the artificial termination of pregnancy.

The legislation of most countries doesn't obtain the male's consent for an artificial termination of pregnancy. A woman has the exclusive right to determine the fate of her pregnancy, and no other person can influence her decision. At the same time, we know the concept of male and 'paper' abortion, as well as ethical and legal studies that justify the need to give men the right to prohibit abortion.

Today, it is a well-established global practice that men do not have the right to prohibit abortion. The interests and desires of a potential father have no legal significance, as the decision to undergo an artificial termination of pregnancy is made solely by the woman based on voluntary and informed consent. Legislation in the field of artificial termination of pregnancy increasingly proclaims the dominance of the autonomy of a pregnant woman over the rights and interests of other stakeholders (parents, husband, community, etc.). As a result of these trends, in 2011, the legislation of only thirteen countries required spousal consent for abortion: Indonesia, Malawi, Syria, the United Arab Emirates, Equatorial Guinea, Kuwait, Maldives, Morocco, South Korea, Saudi Arabia, Japan, Taiwan and Turkey (The world's abortion laws, 2011, p. 2). As of January 2024, only nine countries still support this norm: Morocco, Turkey, Syria, Saudi Arabia, the United Arab Emirates, Yemen, Indonesia, Japan and Taiwan (The world's abortion laws, 2014, p. 1).

UN Convention on the Elimination of All Forms of Discrimination against Women developed the basis for the liberalisation of legislation in the field of artificial termination of pregnancy and the proclamation of the dominance of women's autonomy. Part 1 of Article 16 enshrines the right of women to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights (UN Convention on the Elimination of All Forms of Discrimination, 1979, Art.16). The World Health Organization also emphasises two fundamental conditions for induced abortion: 1) it must be

based on the woman's informed consent, with respect for her dignity, guarantee of confidentiality, and taking into account her needs and opinion; 2) any requirement for third-party authorisation must be eliminated, as this violates women's right to make decisions about reproductive plans and individual autonomy. (WHO Regional Office for Europe, 2014, p. 97). These positions provide not only for the levelling of a man's consent to an abortion but also that of any other person: a doctor, parents of a minor, etc.

The case law of certain countries contains some examples where a potential father of a child has demanded that his objections to an abortion be taken into account as a deprivation of his right to exercise paternity. The following cases are examples: 1) in *Planned Parenthood of Missouri v. Danforth*, the court declared unconstitutional the need for spousal consent for abortion due to the impossibility of delegating the state's veto power to spouses (*Planned Parenthood of Missouri v. Danforth*, 1981); 2) in *Planned Parenthood of Southeastern PA. v. Casey*, the court ruled that the requirement of spousal consent was unconstitutional because of the principles of free will and individual autonomy of women (*Planned Parenthood of Southeastern PA. v. Casey*, 1992); 3) in *Paton v. Trustees of British Pregnancy Advisory Service Trustees*, the plaintiff wanted to prohibit his wife from having an abortion after the divorce. Still, the national court and the ECtHR favoured the woman position (*Paton v. British Pregnancy Advisory Service Trustees*, 1979); 4) in *C. v. S.*, the court did not satisfy the claims of a man who demanded, on his behalf and on behalf of the fetus, to prohibit the mother and local health authorities

from carrying out an abortion. (C. v. S., 1987); 5) in *Tremblay v. Daigle*, the plaintiff demanded a ban on abortion for his partner. Still, the court did not support the plaintiff's position, referring to the fact that the fetus has no legal status, and therefore, the arguments for protecting the rights of the fetus are unfounded.(*Tremblay v Daigle*, 1989).

The principle of prohibition of gender discrimination, equality of rights of men and women, and protection of the right to parenthood are grounds for the concept of male consent to abortion. We should emphasise that we are not talking about the provision of abortion with a man's consent without a woman's consent. In this case, it would be coercion, which violates a whole range of women's rights. However, when we talk about the right of a man to prohibit an abortion if he wants to keep the child and is ready to take on responsibilities, this possibility should be enshrined in the law to ensure that his rights and interests are respected. The birth of a child creates rights and obligations for both parents, but only a woman has a legal opportunity to make decisions.

The disproportionality of men's and women's rights in issues of artificial termination of pregnancy is that a woman can legally deprive a man of his right to become a father or force him to become one against his will. Once fertilisation has occurred, a man cannot influence the birth or non-birth of a child, make medical decisions regarding a pregnant woman, and after the birth of a child, he acquires obligations (e.g., alimony), regardless of whether he wants to become a father. However, could there be ways to balance women's and men's rights?

One of these options may be to grant a man the right to prohibit an abortion if he is ready to become a father, and a woman may bear and give birth to a child and hand it over to him, renouncing her parental rights. In the case mentioned above of *C. v. S.*, there was a similar situation when the court did not recognise the man's right to prohibit an abortion, but the woman gave him the child after birth. This practice happened not as part of exercising the right to prohibition but as a manifestation of the woman's freedom of will. On the one hand, enshrining this option in legislation could simplify the procedure for considering a potential father's opinion. But on the other hand, it would create a confrontation with a woman's right to dispose of her body. Such a position could create a new disproportionality between the rights of men and women, creating an imbalance in favour of men.

Another option for taking into account the rights and interests of men may be using a compensatory mechanism when a woman has an abortion and a man wants to keep the child. In the case of *Anil Kumar Malhotra v. Ajay Pasricha*, the plaintiff claimed compensation for non-pecuniary damage from his wife, her parents and the doctor for providing an abortion without his consent, as he wanted to keep the child and suffered mental anguish (*Anil Kumar Malhotra v. Ajay Pasricha*, 2017). The court dismissed the claim, taking into account the opinion of the Punjab and Haryana High Court that only the consent of a pregnant woman is sufficient for an abortion and that an unwanted pregnancy is serious harm to her physical and mental health (*DR Mangla Dogra and Ors v. Anil Kumar Malhotra and Ors*, 2011). The court acknowledged that an unwanted pregnancy can cause mental

suffering for a woman. Still, it did not take into account that termination of pregnancy can cause moral damage to a man.

A similar case is being considered in the United States, where a man has filed a lawsuit against the woman who helped his wife have a medical abortion. The plaintiff insists on compensation for non-pecuniary damage due to the ‘murder of his child’ and plans to file a separate lawsuit against the pharmaceutical company that produces the abortion pill (*A man sued his ex’s friends for helping her abortion. Now they’re suing him*, 2023). This case is of particular resonance due to the abolition of the right to abortion by the US Supreme Court (by overturning *Roe v. Wade*) and the adoption of a law criminalising abortion in Texas.

The use of the mechanism of compensation for non-pecuniary damage can, to some extent, balance the rights of men and women, as abortion without the consent of the potential father may violate his right to parenthood, the prohibition of discrimination, the right to a family, etc. We can use this construction in both directions. Thus, a woman can claim compensation for non-pecuniary damage from a potential father of a child who demands an abortion, refuses to marry (if he has previously offered to do so), refuses to pay child support, etc. However, even the above cases provoke academic debates, which is caused by the concept of ‘paper abortion’¹.

¹See McCulley, M. G. (1988). The male abortion: The putative father's right to terminate his interests in and obligations to the unborn child. *J Law Policy*, 1(7), 1–55; Hales, S. D. (1996). Abortion and Fathers' Rights.

The disproportionality of men's and women's rights arises when a man has no legal mechanisms to influence the decision to conduct an artificial termination of pregnancy and its prohibition and cannot renounce paternity and any obligations (including financial ones). At the same time, a woman determines the possibility of a man exercising his right to paternity, the fate of the child after birth (independent upbringing or handing over to social services), the designation of a man as the child's father (except for the birth of a child by a married woman) and the financial obligations of the child's father (whether to demand alimony or not). This note is particularly relevant given that fertilisation may have occurred as a result of rape or misrepresentation (use of a man's sperm without his knowledge, deceit of a woman's use of contraception, etc.).

The solution to this issue is possible through direct regulatory consolidation of the following models: 1) if a woman wants to have an artificial termination of pregnancy, but the potential father is against it, he should have the possibility to assume all parental responsibilities in exchange for not

In *Reproduction, Technology, and Rights* (p. 5–26). Humana Press. https://doi.org/10.1007/978-1-59259-450-4_1;

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having an abortion (the woman gives up the child, and only the man receives parental rights); 2) if a woman conducts an artificial termination of pregnancy against the will of the potential father, he has the right to compensation for non-pecuniary damage ; 3) if a woman becomes pregnant by raping man or deceit him, he has the right to renounce all parental and financial obligations. The proposed positions do not apply to cases where pregnancy is the result of violence, coercion against a woman (rape, blackmail, etc.), or if there are medical reasons for an abortion.

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Impact of War on Socio-Cultural, Political and
Legal Transformations of the Ukrainian Society:
War as a Socio-political Phenomenon

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Transformations of the society that are taking place at the present stage of its development, which we observe within the political and economic space rapidly mutating towards globalisation, convincingly prove the need to understand the causes of these transformations and analyse them. This is essential for the further effective functioning of the state as a form of society and the performance of all its functions.

One of the most significant accelerators for modern transformations is the growing tendency of one state's violent exercise of will against another, which in the scientific literature is called war.

War as a socio-cultural phenomenon (Klauzevits, 2023) is a characteristic feature of our civilisation despite its consequences. No matter how frightening it may be, this statement is well supported by various researchers. Thus, J.-J. Babel notes that since 3500 BC, humanity has lived without wars for only 292 years. During this period, there were about 14,550 large and small wars, during which more than 3.66 billion people died of starvation, epidemics and other causes that were the consequences of wars (Trebin, 2015). Some researchers provide even more detailed statistics on wars and their consequences over the past four hundred years. Thus, in the eighteenth century, there were 68 wars in which more than 1,000 people died yearly, and the total losses amounted to 4.4 million people. The corresponding figures for the nineteenth century were 205 and 8.3 million people, and for the twentieth century - 237 and 98.8 million people. In the nineteenth century, there were 14 wars with human losses of more than 100,000 people, including two wars in which more than 1 million people died.

The twentieth century was a record-breaking period regarding the scale and intensity of military conflicts. The frequency of wars fluctuated, but in general, it exceeded the average frequency of wars in the entire known history of mankind by about 1.5 times (Serebryannikov, 1998).

As a result of the First World War, losses on the battlefields amounted to about 10 million people, including 2.5 million in Russia, 1.4 million in France, 900,000 in Great Britain, 100,000 in Belgium, 2 million in Germany, 1.5 million in Austria-Hungary, and 600,000 in Italy. Many died in prisoner-of-war camps. About 180,000 tonnes of toxic substances were produced for military purposes. At the end of the war, the world's population, exhausted by deprivation and suffering, was hit by a brutal influenza epidemic ('Spanish flu'), which killed about 20 million people (Trebin, 2015).

The Second World War was the most destructive war in human history, involving 61 countries and more than 80% of the world's population. This war took the lives of 40 million people alone in Europe (including the USSR), out of which 27 million were lives of soviet people. Poland had losses of 6 million people, Yugoslavia's - 1.7 million, France's - 600 thousand, the USA's - 400 thousand, and England's - 370 thousand. Germany lost 13.6 million people in the war. In addition, states in other parts of the world lost approximately 7.6 million military personnel and 6 million civilians. Thus, the total irrecoverable losses during the Second World War amounted to about 55 million people (Trebin, 2015). In the period after the Second World War in the twentieth century, according to various estimates, 225 to 232 military conflicts in 148 regions were recorded on the planet (Khoma, 2014).

These sad statistics are increasing at the present stage of development of our civilisation. At the same time, the scale of warfare is constantly growing and changing. In particular,

2022 was the year of the resumption of full-scale wars on the territory of European countries. Russia's unprovoked invasion and occupation of some territories of sovereign Ukraine has caused untold human grief and the destruction of millions of lives of the Ukrainian people. The consequences of this war are almost impossible to assess today as it is still ongoing.

At the same time, the analysis of the aggressive war waged by the Russian Federation and the heroic resistance of the people of Ukraine and the mechanisms of its support by partner states shows that the phenomenon of war itself is transforming, as well as the mechanisms of its conduct and justification. This raises the question of its nature and consequences, especially for those states that are its victims, as it makes it possible to develop mechanisms of counteraction and recovery (including legal ones) after its end.

In the study and research of war as a socio-political phenomenon, two polar trends can be distinguished: 1) the moral approach, according to which war is seen as unconditional evil, resulting in the death of people and the spread of injustice (the so-called 'unjust wars', which are opposed to just wars, various theories of just wars and methods of their conduct are being developed); 2) the scientific approach, within which war is seen as a common (in the sense of chronicity, routine) social phenomenon with its functions, characteristics, methods and tools of conduct.

We are inclined to use the latter approach, as it makes it possible to study the substantive essence and nature of war as a social phenomenon, and we will try to stick to it in the

future. The scientific approach to the study of war involves several stages, namely, disclosing the essence of the concept of “war” used in research, highlighting its characteristic features and, on this basis, forming a modern perception of this phenomenon.

From our point of view, it is worth starting with defining the term “war” itself. This will allow us to identify different points of view on the phenomenon itself and its components, which are determined by researchers.

An analysis of scientific and reference literature shows that the term “war”, despite the almost constant existence of this phenomenon in the world, has not found an unambiguous understanding at the present stage of development of our civilisation. At the same time, if we analyse the history of wars over the past five hundred years (a period in which we can more or less accurately and evidentially confirm a particular event), we can say that it was during this period that the ‘traditional war’ was formed, with the state playing a central role in its conduct.

According to researchers (Mcfate Sean, 2019), the beginning of this process was laid by the events that led to the Thirty Years' War, which became one of the bloodiest pages in the history of Europe. In the crucible of the Thirty Years' War in 1648, the Peace of Westphalia was born, which gave rise to a new international order with the state at its centre (Mcfate Sean, 2019). With the emergence of the Westphalian Order, states became the primary beneficiaries of force, while mercenaries and those who hired them were outlawed. States began to invest in their standing armies, and the relationship

between power and secular order became absolute. This gave states the right to write the rules by which their subordinates had to live.

The analysis of the international order created based on the Peace of Westphalia shows that two features characterised it. Firstly, the Westphalian order was based on many rules, but most importantly, the states were the main ones, and all others were their subordinates. In this order, states guarantee their dominance by defeating anyone who dares to oppose them with their national armies.

The second feature of the Westphalian order was forming the order of armed conflicts. According to it, only states were allowed to have armies and wage wars. This made war an exclusively interstate affair conducted by the armed forces of a state according to certain customs and rules. Later, these rules were formalised in the “customs and laws of war”, which were later objectified in The Hague (IV Konventsiiia pro zakony i zvychai viiny na sukhodoli, 1907) and Geneva (Zhenevska konventsiiia pro zakhyst tsyvilnoho naseleunia pid chas viiny, 1949) Conventions. Notably, they apply only to interstate conflicts, suggesting that all other forms of warfare, except interstate conflicts, are outlawed.

The Westphalian way of warfare became “traditional” in the minds of the era, whose heirs are the modern world. Interstate wars were recognised as the only type of warfare in which state armies fought, not the mercenary armies of kings and popes. Victory on the battlefield determined the winners and losers and elevated states to the glory of victors who decided the fate of the vanquished.

The above-mentioned is the basis for perceiving war as a socio-political phenomenon and constructing its definition in modern academic literature and normative acts. For example, here are some of the most typical ones.

One of the leading theorists of modern warfare, Carl von Clausewitz, perceived war as “...the continuation of state policy by other means” (Klauzevic, 2002), which is objectified as “...an act of violence aimed at forcing the enemy to do our will”(Klauzevic, 2002).

Studying violence as a phenomenon and revealing its forms, G. Sorel defined war as “a political act by which states, unable to settle disputes over their obligations, rights or interests, resort to armed force to decide which of them is more muscular and thus impose their will on another state (Sorel, 1910)“.

Within the social sciences, A. Johnson perceived war as an armed conflict between groups of people, such as races or tribes, states or smaller geographical units, religious or political parties, and economic classes (Johnson, 1935).

G. M. Cullen perceived war as an armed confrontation between two or more sovereign institutions of international law that use organised armed forces to achieve specific goals (Kallen,1939).

Reflecting on the peculiarities of the First World War from the standpoint of sociological science, A. Shworth pointed out that war can be defined as a type of armed conflict between large nation-states in which the population and

resources are rationally and extensively organised for its conduct (Shworth, 1968).

Within the framework of the international legal order, according to J. G. Stark, the war in its most commonly accepted sense is "a competition between two or more states, primarily with the help of armed forces, and the ultimate goal of each of its participants is victory or other imposition of their terms of peace" (Starke, 1972). In his turn, L. Oppenheim defined war as a clash between two or more states with the help of armed forces to overcome each other and impose such conditions of peace as the winners wish (Oppenheim, 2015).

At the end of the twentieth century, the definition of war began to include a legal feature, speaking of a "just" war or a war within the law. Thus, war was considered by C.A. Wright as "a legal condition that equally allows two or more warring parties to engage in a conflict with the use of armed force" (Wright, 1983). The comprehensive literature also reflects these trends. In particular, the most characteristic is the definition of war as "a state in which states use all forms of pressure against each other in compliance with the laws and customs of warfare (*jus in bello*)" (Shemshuchenko, 2012; Shemshuchenko, 2014).

After the end of the Cold War, the world entered a new stage in perceiving war as a socio-political phenomenon. In particular, the perception of war was influenced by the disappearance of the Soviet Union as the main adversary of the Western world. Also, the perception of war has undergone a significant transformation with the emergence of

new socio-political threats. In particular, after the terrorist attacks of 11 September 2001, the United States of America declared its involvement in the “global war against terror”, which necessitated addressing the problems of defining the concepts of “war” and “armed conflict” in international law. In May 2005, the Executive Committee of the International Law Association (ILA) commissioned the Use of Force Committee to analyse the international legal definitions of the terms “war” and “armed conflict”. The experts' conclusions, among other things, were that although the term “war” continues to be used, in general, international law uses the broader concept of “armed conflict” instead, which includes two mandatory components: the presence of organised armed contingents and their involvement in hostilities of a certain intensity. These minimum criteria are considered in military and political circles sufficient to distinguish war from other armed aggressions and may be accompanied by other additional characteristics (Parakhonskyi & Yavorska, 2019).

K. Clausewitz emphasised that war is a social reality since “war does not belong to the sphere of art and science, but to the sphere of social life” (Klauzevits, 2023). It is a social reality in which certain types of regulation of social relations are envisaged to commit physical violence. At the same time, he noted that “war can be compared to trade, which is also a conflict of human interests and activities” (Klauzevits, 2023). With this approach, the scientist foresaw a change in the forms and methods of warfare, which is confirmed by the change in the mechanisms and tools of modern warfare. Thus, modern military science identifies six *generations* of warfare.

Linear tactics characterise the first generation of warfare, the era of cold steel and muskets. It reflects the tactics of the smoothbore musket era, linear formations, columns, phalanxes, the use of artillery, cavalry and infantry in the uniform of the respective state, focusing on the highest rate of fire, conducting “desk wars” (Klauzevits, 2023).

The second generation is characterised by introducing “fire and manoeuvre” tactics during and immediately before the First World War. It reflects the period of rifled weapons, machine guns, artillery fire from closed positions, and mass artillery fire that replaced concentrated manpower. This period is characterised by an understanding of the importance of the industrial economy in the production of weapons and military equipment, the recognition and acceptance of operational art, the incorporation of ideas and technologies into military affairs, and the awareness of the need to develop infrastructure and communication routes (Loishyn, 2022).

The third generation is characterised by the tactics of broad manoeuvres, encircling the enemy and breaking through its defence lines to great depths using large tank formations and aviation (Loishyn, 2022). Third-generation warfare uses late modern tactics, such as speed, stealth, and surprise, bypassing enemy positions and destroying their forces from the rear (Loishyn, 2022).

The fourth generation of warfare is characterised by blurring the distinction between war and politics, between combatants and non-combatants. It is an indirect result of the changes caused by social, economic, political and technological transformations as a result of globalisation (Knopf &

Ziegelmayr, 2012). As of today, the characteristic features of the fourth-generation wars are the following: 1) high level of technological development; 2) importance of information and psychological operations; 3) widespread use of precision weapons and UAVs; 4) dependence on the Internet, and other information networks, and mass media (Loishyn, 2022).

The fifth generation of warfare was based on the nuclear war theory, where the objectives cannot be achieved. It was assumed that it would be waged² mainly with the help of non-kinetic military actions, social engineering, disinformation, cyber-attacks, and the latest technologies (artificial intelligence and fully autonomous systems). In particular, D. Abbott characterised the fifth-generation war as a war of “information and perception” (Abbott, 2010).

Sixth-generation warfare aims to destroy the enemy country's economic potential and change its political system. In this war, a few ground forces play a decisive role, not nuclear, but high-precision conventional strikes and defensive weapons based on new physical principles. The battles of the sixth generation of wars will fundamentally differ from the

² There is a lively debate in the scientific literature about the generation of warfare in which the modern world is living. Some say that today the features of the fourth generation wars are still fully manifested, while others say that this is the future (Cornelis van der Klaauw. *Generations of Warfare: An Outdated Concept?* The Three Swords Magazine. 2021. № 37. P. 71-74.). Others point out that the modern world is in the fifth generation of war (Fatma Twfiak. *The Development of Warfare Through Seven Generations: Cyber-Attacks and Impacts on International Relations*// <https://www.ia-forum.org/Files/BNMWSM.pdf>), others emphasise the existence of the sixth generation (Slipchenko V. I. *Sixth Generation Wars. Weapons and Military Art of the Future*. Moscow: Veche, 2002, 153 p.).

previous ones in that the aggressor's power is functionally aimed only at direct damage to the enemy's economic facilities. At the same time, the most potent strikes will be delivered by unmanned precision weapons of various types (Bakhtin, 2008).

When revealing the essence of modern warfare as a type of socio-political activity of the state, it is worth paying attention to the place of its implementation. In this aspect, war theorists use the term 'theatre of war'. It is perceived as a conditional concept that implies the land territory, sea area and airspace above them, within which the armed forces of states (coalitions of states) can conduct military operations on a strategic scale. Based on this perception, there are three classical places where military operations can take place: land territory, maritime territory and airspace.

At the same time, the development of modern military and civilian technologies and intensive globalisation processes that have taken place over the past thirty years has led to the emergence of new 'theatres of war' and new areas of application of violence by one state against another. Their nature is unrelated to direct violence but has an economic and technological essence. Such new theatres of war are the economic sphere - the economic space within which economic wars are waged; a vivid example is currency wars between economically developed states (Rickards, 2011) and cyberspace (Harris, 2014), where constant cyber-attacks are carried out.

Thus, the transformation of warfare in modern conditions has expanded the spheres of military aggression and the

emergence of five main theatres of war: land, sea, air, economic, and cyber. It should be noted that the expansion of theatres of war causes much more significant potential damage to the enemy and creates potential obstacles to effective military operations.

Given the above, we can state that in our changing reality, at the present stage of development of our civilisation, the issue of an adequate definition of war as a socio-political phenomenon is still uncertain, and this gives grounds to speak of the need for further development of this issue. For additional research, for this paper, we will try to formulate our understanding of the concept of “war” in a generalised form. Based on the opinion of Carl von Clausewitz, we generally perceive war as “acts of violence aimed at forcing the enemy to do our will” (Klauzevits, 2023). This definition is the most general and inherently political. It can be used to deepen the study of the essence of modern warfare and improve the wording of its definition at the present stage.

The analysis of the definition used as a basis makes it possible to identify two main features of war: 1) parties - the aggressor state and the opponent state; 2) goals - imposing someone else's will to achieve a result. Taking into account the above definitions, additional features of war as a socio-political phenomenon may be considered: the use of violence by one adversary against another; organisation of violence is a state strategy; the said state strategy is reflected in the regulations of the aggressor state; political goals of war are of state interest. From the above, it is clear that most features are

certain purposeful behavioural acts of the state's parties to the war.

Thus, summarising those mentioned above, we consider it possible to define war in a generalised way as the behaviour of an aggressor state, which is a recognised subject of international law or their associations, aimed at imposing political will in the form of a particular result by organising violence using various instruments of military aggression and conducting conventional warfare or other aggressive manifestations of violent behaviour on the sovereign internationally recognised territory of the state-victim of aggression. The instruments of military aggression include: 1) military operations of varying intensity, carried out by both official and unrecognised armed forces; 2) organised economic blockades, embargoes, regulation of currency parities, etc.; 3) cyber-attacks on the infrastructure of the victim state; 4) other aggressive manifestations of violent behaviour.

II. Tools for studying the consequences of the war for the Ukrainian state and society

It is difficult to characterise the impact of the war on Ukraine and its society due to its complexity. Changes occur simultaneously in the economic, socio-cultural, political and legal spheres. This prompts us to identify the primary (vector) spheres of life in Ukrainian society and focus only on the most significant transformations.

The study of these changes in the functioning of the Ukrainian state and society shows that the most critical areas

of the economy, education, culture and social and political life have undergone the most significant transformations.

To illustrate the changes in the functioning of Ukrainian society and the state, we will rely on statistical data obtained as a result of the analysis of the functioning of the Ukrainian state by both state authorities and national and foreign nongovernment organisations. This will allow us to operate with objective data on the actual state of material and organisational resources based on quantitative data in several selected areas that are the most indicative.

In analysing the statistical data, we will compare it with the data for previous periods, which will help identify differences in the quantitative indicators of each area and allow us to conclude the nature of the war's impact and quality. Comparisons will be made with indicators that illustrate the state of the analysed sphere before the full-scale invasion (until 24 February 2022).

To study the transformation of the functioning of Ukrainian society and the state, we have analysed, using analysis and synthesis, the changes that have taken place in the following areas, which, in our opinion, are indicative of the socio-cultural, economic and political state of the state and society, in particular: 1) education (secondary, higher education, university admissions, etc.); 2) finance (banking, budget revenues, GDP); 3) labour market (processes of migration, emigration, mobilisation); 4) individual sectors of the economy (agriculture, transport).

In analysing the changes, we use a dialectical method that takes into account variables such as cause-and-effect relationships and/or objective conditions (mobilisation, uncontrolled territory, destruction of critical and port infrastructure, etc.) that can serve as factors to strengthen/weaken or accelerate/decrease the processes of outcomes that transform the indicators of the war's consequences from quantitative to qualitative.

Finally, we apply a structural research method to analyse the level and quality of change and the consequences of the war in relation to two levels of the socio-political structure - the state level and the level of society.

We will illustrate and characterise the changes in the functioning of Ukraine as a sovereign state through the prism of the war we described in the previous section. Taking into consideration that at the present stage of development of the mechanisms of warfare, it is stated that it is waged in five theatres of war (land, air, sea, economic relations, information and cyberspace), we will illustrate the changes that have occurred as a result of the full-scale invasion of Russia, respectively, in the sovereign territory of Ukraine, sovereign maritime waters and airspace, in the economy, and information and cyberspace.

The consequences of the war on Ukrainian society will be reflected through the prism of specific social and cultural spheres, such as education, employment, cultural status, etc.

III. Consequences of military aggression for the state of Ukraine

The characterisation of any state begins with its territory, which is subject to its sovereignty. The encroachment on or loss of territory is unambiguously interpreted as an encroachment on sovereignty and aggressive actions against the integrity of the state. As noted above, the state's territory during military actions turns into theatres of war. The conduct of military operations since February 2022 has had negative consequences for Ukraine in each of the following territories and spaces: the sovereign territory of Ukraine, sovereign maritime waters and airspace, the economy, and information and cyberspace. Statistical data shows the following changes.

The sovereign territory of the state of Ukraine. As of December 2023, 109,000 square kilometres of Ukraine's territory are still under occupation (Denkovych, 2023). As of January 2023, 174,000 km² of Ukrainian land was potentially mined. As of January 2024, 156,000 km² were cleared of mines. In 2023, demining specialists surveyed 274,000 hectares of agricultural land in Ukraine, and 208,000 hectares had already been transferred to farmers (Zharykova, 2024). In January-April 2024, joint-stock company Ukrzaliznytsia (Ukrainian Railways) transported 59.9 million tonnes of cargo, up 28.7% year-on-year. As of February 2022, 21 railway stations were damaged. Since the June 2024 shelling, Ukraine has lost more than 9 GW of generation capacity due to Russian shelling (Ukraina vtratyła ponad 9 HVt potuzhnostei heneratsii– Shmyhal, 2024).

Sea water area. As of February 2022, 4 seaports were damaged. As of April 2024, due to the territories of Ukraine's regions bordering the Black Sea that Russia seized, Ukraine lost access to the Black Sea ports, which provided the lion's share of exports by sea (Perelik terytorii, na yakykh vedutsia (velysia) boiovi dii abo tymchasovo okupovanykh Rosiiskoiu Federatsiieiu, 2024). At the same time, Ukraine continues to export grains and oilseeds using access through the Danube River ports (about 15% of the total).

Airspace. The war has also affected many industries in the eastern regions, disrupting air travel and supply chains (Organisation for Economic Co-operation and Development, 2022). As of February 2022, 11 airports were damaged. From February 2022 to May 2024, the airspace over Ukraine is closed for passenger and cargo traffic. EUROCONTROL predicts that restrictions on civil aviation flights in Ukrainian airspace may continue until 2029.

Information and cyberspace. In the third quarter of 2022, the number of registered and processed cyber incidents increased from 64 to 115, respectively, compared to the second quarter of the same year (Derzhspetsviazku: Kilkist kiberatak na Ukrainu prodovzhuie zrostaty, 2022). In 2023, the number of cyberattacks in Ukraine increased by 15.9% to 2,543 incidents compared to 2022. According to the government's computer emergency response team CERT-UA, 347 cyberattacks were recorded against government and government organisations, 276 against local authorities, 175 against security and defence sector organisations, and 127 against commercial organisations. The energy sector was

attacked 92 times, telecoms 81 times, and educational institutions 38 times. 32 - the transport industry, 30 - the financial sector, 25 - the IT sector, 15 - the media, 12 - medical institutions. In the second half of 2023 alone, 1.46 thousand cyber incidents were recorded and investigated (Zharykova, 2024).

Economic space. At the end of 2022, GDP declined by 29.2%, and inflation was 26.6%. State budget expenditures in March (UAH 347.6 billion) recovered to the relatively high levels of May- June 2023. Spending on defence increased to UAH 196.5 billion (+20% YOY), and on justice and law enforcement to UAH 60.4 billion (+63% YOY). The government has introduced capital controls and fixed the exchange rate to avoid additional consequences for the financial system. At the end of 2022, GDP declined by 29.2%, and inflation was 26.6% (World Bank, Government of Ukraine, European Union, and United Nations. Ukraine Rapid Damage and Needs Assessment February 2022 – February 2023, 2023). The trade deficit doubled between December 2021 and December 2022 (O’Hanlon, Michael E., Constanze Stelzenmüller, and David Wessel, 2023).

As of October 2022, the International Labour Organisation (ILO) estimates that 2.4 million jobs have been lost compared to the period up to February (ILO, 2022). 2021, the services sector employed the largest workforce, accounting for half of GDP 21 (The World Bank, 2022). In contrast, agriculture accounted for only 11% of GDP in 2021 and 14% of employment. The labour market has structural weaknesses, such as relatively high and persistent unemployment

(Robocha syla Ukrainy u 2021 rotsi, 2022). As of 1 January 2024, the total number of unemployed registered with the State Employment Service (SES) was 96.1 thousand people (over 40% of whom have a university degree), with 40.2 thousand vacancies available (Pyshchulina & Markevych, 2022). In percentage terms, the unemployment rate in Ukraine was 16.8% (Treker ekonomiky Ukrainy pid chas viiny, 2024). According to Work.ua (the most significant job and employee search site in Ukraine), as of January 2024, the labour market recovered by 93% in terms of job offers compared to February 2022. However, the recovery is uneven across regions. Compared to pre-war levels, the number of vacancies increased the most in the following areas: Zakarpattia (155%), Ivano-Frankivsk (146%), Khmelnytsky (125%), Lviv (123%), Vinnytsia (120%), Rivne (118%) and Chernivtsi (116%) (Vidnovlennia rynku pratsi v Ukraini v umovakh viiny, 2024).

The economy's stability is also primarily influenced by the country's state of education. The analysis of the admission campaign by the State Education Quality Service of Ukraine in 2023 in terms of its organisation and conduct shows changes in the enrolment for higher and vocational higher education. In particular, 1,070 educational institutions announced enrolment, of which 626 are basic (7% less compared to 2022, which is mainly due to the processes of reorganisation of academic institutions through mergers) (Rezultaty vyvchennia vstupnoi kampanii 2023 roku u vyshchii ta fakhovii peredvyshchii osviti, 2023). Forty-six educational institutions have obtained a licence and submitted bids with a 'mixed set' to the Unified State Electronic

Database on Education (USEDE) less than in 2022. At the same time, under martial law, situations arise when a person does not have a passport at all or is unable to update (obtain) it in time (Informatsiino-analitychna dovidka za rezultatamy vyvchennia Derzhavnoiu sluzhboiu yakosti osvity Ukrainy orhanizatsii ta provedennia zakladamy osvity vstupnoi kampanii v 2023 rotsi, 2023). The latter is an obstacle to submitting documents to educational institutions and, as a result, the inability to exercise the right to education.

As a result of the war, 2 million children left Ukraine or were displaced within the country as schoolchildren (Ukraine Rapid Damage and Needs Assessment February 2022 – February 2023, 2023). 17% of IDP (Internally Displaced Person) households reported that their children did not have access to education in the 2022-2023 school year (Ukraine Internal Displacement Report: General Population Survey Round 12. IOM, 2023). Only a few oblasts in the western macro-region were offline primarily; in the northern and central macro-regions, the situation was more mixed, while in the southeastern macro-region, education was mainly online. In addition to the security situation, the continuity of education was hampered by disruptions in the supply of utilities to schools (Cedos, savED, and International Renaissance Foundation, 2023).

Defence against military aggression requires the Ukrainian state to implement mobilisation procedures and conscript the population into the armed forces. Given that the Ukrainian population is peaceful and non-aggressive, the attitude to mobilisation in Ukrainian society is ambiguous. As a result,

education in Ukrainian society is used as a legal way to avoid mobilisation. For example, in 2022, about 85,000 men of conscription age entered higher educational institutions. In 2023, approximately 110,000 of this contingent. The number of new male students over the age of 30 increased 23 times between 2022 and 2023. The number of male applicants aged 30-39 in 2020 - 1700 applicants; 2021 - 2186; 2022 - 30,277; 2023 - 43,7202. Among men aged 40 and older in 2020 - 692 applicants; 2021 - 884; 2022 - 15,055; 2023 - 15,055. At the same time, Ukrainian higher education institutions received an additional UAH of 2.6 billion this year due to the increase in the number of male students of military age. In 2022, additional income amounted to UAH 1.7 billion (Do zakladiv vyshchoi osvity tsoho roku vstupylo blyzko 110 tysiach cholovikiv pryzovnoho viku, 2023).

Another problem is the mismatch between the current state of labour force training and the economy's needs. The education system's plans for training the workforce developed before the war, have not been changed, making it difficult to adapt to modern market requirements. According to the State Employment Service, one of the main problems in the labour market is the occupational and qualification imbalance and specific imbalances between labour supply and demand. Employers currently have the most significant demand for skilled manual workers. However, among the registered unemployed, 43% have a university degree; in some large cities, this number reaches 60% and above. Moreover, the number of unemployed former executives, professionals and specialists is three times higher than the number of relevant

vacancies (Yakykh pratsivnykiv potrebuti ukrainski robotodavtsi sohodni ta yaku zarplatu hotovi platyty? 2023).

Before the war, Ukraine was the largest recipient of remittances in Europe and Central Asia, with a record-high inflow of USD 18.2 billion (9% of GDP) in 2021 (World Bank Group and KNOMAD, 2022). In November 2022, remittance inflows to Ukraine were forecast to increase by 2% year-on-year in 2022 to reach USD 18.4 billion (Dilip, Plaza, Riordan, Chandra, & Shaw, 2022). However, according to the National Bank of Ukraine, remittances to Ukraine stabilised and stopped growing in 2022 (Dialnist v Ukraini platizhnykh system «perekazu koshtiv»: Povidomlennia Natsionalnoho banku Ukrainy, 2023; Key Figures: Mobility Within and From Ukraine 2020-2023. IOM, 2023; Inflitsiyni zvit: Korotkyi ohliad. Natsionalnyi bank Ukrainy, 2023).

Over the past decade, the structure of Ukraine's economy, which used to be heavily oriented towards the export of goods, has gradually shifted towards a strong services economy, in particular information technology (IT) services, which accounted for 39% of services exports in 2021 (up from 14% in 2014) (ICT service exports (% service exports, BoP, 2022). Agriculture accounted for a significant share of total exports (43.9%) (Agricultural Production and Trade. US Department of Agriculture, 2022).

As one of the world's largest grain and vegetable oil producers, Ukraine is crucial in ensuring global food security (Ukraine Focus on Food: Staple Starches – July 2022, 2022). In April, exports of grains and oilseeds reached a wartime

record of 6.6 million tonnes. Black Sea routes remain the key driver of agricultural export growth, accounting for 78% of grain and oilseeds exports, the second highest since February 2022. Seaborne exports of grains and oilseeds reached pre-war levels. For February 2022, 2023, and 2024, the exports of grains and oilseeds are expected to reach 6 million tonnes. The peculiarity of sea deliveries from April 2022 to the present is a significant increase in the use of the Danube ports for grain and oilseeds. Also, compared to the pre-war figures, from April 2022 to the present, there has been a significant increase in the transportation of grains and oilseeds by road and rail (Treker ekonomiky Ukrainy pid chas viiny, 2024).

Consequences of the war for the state of Ukraine

The analysis of the above-given statistics shows that the consequences of the war in Ukraine are manifested in the internal and external contours of the existence of the state victim of aggression. On the internal contour, the state experiences a complex political, economic and cultural impact, which is most clearly manifested in the two main features of the state - its territory and population. These two elements are intertwined and linked to the theatres of war and to the answer to the question of how the state's presence at sea, on land, in the air, the economy and cyberspace has been transformed.

In general terms, the war has changed the scope and nature of the state's jurisdiction over its sovereign territories. In particular, the scope of the Ukrainian state's jurisdiction has been reduced in terms of quantity due to the occupation of Ukrainian lands by the Russian Federation, which amounted

to about 19% of the total area of Ukraine before 2014. The large-scale displacement of the population from the occupied territories, combined with conscription into the Armed Forces of Ukraine, has led to an imbalance in the labour market. According to UNHCR monitoring, there has been not only a decrease in the number of available workers but also a high level of employment for Ukrainian refugees abroad. Most of them are highly skilled workers. These demographic changes in the labour force will be significant in the long run for the labour market recovery, which should consider the loss of highly skilled workers and facilitate the integration of internally displaced persons into local communities (Giacomo, Boeri & Zholud, 2023).

The change in jurisdiction occurred due to increased military control in the territories where military operations are taking place and in other regions. Also, it extended to areas considered purely peaceful before the war - education, culture, agriculture, etc. This was mainly due to changes in strategic plans in various spheres of Ukraine's existence and the consolidation of this trend in Ukrainian legislation (Pro skhvalennia Natsionalnoi stratehii dokhodiv do 2030 roku: Rozporiadzhennia Kabinetu Ministriv Ukrainy, 2023; Pro skhvalennia Stratehii derzhavnoi polityky shchodo vnutrishnoho peremishchennia na period do 2025 roku ta zatverdzhennia operatsiinoho planu zakhodiv z yii realizatsii u 2023-2025 rokakh: Rozporiadzhennia Kabinetu Ministriv Ukrainy, 2023).

The adoption of regulations aimed at organising and ensuring law and order in the territory controlled by Ukraine aims to

establish stricter rules of conduct for all entities in the state's territory compared to peacetime. Such legal provisions establish special legal regimes. On the one hand, they grant additional powers and expand the competence of law enforcement agencies, military formations, and public authorities operating in the military sphere and/or providing for military needs (For example, Pro viiskovo-tsyvilni administratsii: Zakon Ukrainy. Verkhovna Rada Ukrainy, 2015; Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo okremykh pytan prokhodzhennia viiskovoi sluzhby, mobilizatsii ta viiskovoho obliku : Zakon Ukrainy. Verkhovna Rada Ukrainy, 2024; etc.). On the other hand, the same regulations restrict the rights and freedoms of different subjects of private law, such subsequent: 1) stricter conscription for military service (Pro zatverdzhennia Poriadku orhanizatsii ta vedennia viiskovoho obliku pryzovnykiv, viiskovozoboviazanykh ta rezervistiv: Postanova Kabinetu Ministriv Ukrainy, 2022); 2) increased coercive measures (increased fines) (Pro vnesennia zmin do Kodeksu Ukrainy pro administratyvni pravoporushennia shchodo udoskonalennia vidpovidalnosti za porushennia pravyl viiskovoho obliku ta zakonodavstva pro oboronu, mobilizatsiinu pidhotovku ta mobilizatsiiu: Zakon Ukrainy. Verkhovna Rada Ukrainy, 2024; Pro vnesennia zmin do Kryminalnoho protsesualnogo kodeksu Ukrainy ta inshykh zakonodavchykh aktiv Ukrainy shchodo posylennia samostiinosti Spetsializovanoi antykoruptsiinoi prokuratury: Zakon Ukrainy. Verkhovna Rada Ukrainy, 2023); 3) increased number of non-public administration measures (expanding the list of information falling under state secrets (Pro derzhavnu taiemnytsiu: Zakon Ukrainy. Verkhovna

Rada Ukrainy, 2024); 4) procurement for military needs on closed platforms, countering cyber-attacks (Pro vnesennia zmin do Kryminalnoho kodeksu Ukrainy shchodo pidvyshchennia efektyvnosti borotby z kiberzlochynnistiu v umovakh dii voiennoho stanu: Zakon Ukrainy. Verkhovna Rada Ukrainy, 2022), etc.).

Negative consequences at the state level include the introduction of stricter regulations on military service. Amendments to the legislation on mobilisation training and mobilisation (Pro mobilizatsiinu pidhotovku ta mobilizatsiinu: Zakon Ukrainy. Verkhovna Rada Ukrainy, 2024) led to subsequent: 1) a sharp temporary increase in demand for educational services; increased criminal and administrative measures against violators of the law; impact on demographics - outflow of young men of military age abroad (Derzhprykordonsluzhba ne obmezhuie vyizd za kordon yunakiv do 18 rokiv. Derzhavna prykordonna sluzhba Ukrainy, 2024); 2) changes in the structure of enterprises - increase in the number of sole proprietorships registered by women (Kozhen druhyi FOP u 2023 rotsi vidkryly zhinky – doslidzhennia, 2023; 59% novykh fopiv v Ukraini u 2024 rotsi vidkryly zhinky: tse naivyshchyi pokaznyk za ostanni roky, 2024), etc.

The financial sector is undergoing strategic reformatting Stratehiia rozvytku finansovoho sektoru Ukrainy do 2025 roku (discontinued in 2023), 2023). Along with the shift from sustainable development to maintaining macroeconomic indicators of the financial sector, currency liberalisation (Valiutna liberalizatsiia (do 24 liutoho 2022 roku), 2019; Pro

robotu bankivskoi systemy v period zaprovadzhennia voiennoho stanu, 2022) was suspended, and strict administrative restrictions on the currency sphere were applied (Stratehiia pomiakshennia valiutnykh obmezhen, perekhodu do bilshoi hnuchkosti obminnoho kursu ta povernennia do inflitsiinoho tarhetuvannia, 2023). The options and scope of other measures of ‘manual management’ of financial resources (IMF loans, foreign exchange interventions) have also been increased (Valiutni interventsii NBU, 2024).

The consequence is the reformation of the economy from peaceful to military directions, which includes both the construction of new production facilities in heavy and light industries that should produce military and dual-use goods and the creation of conditions for involving the population in the production of dual-use goods (production of drones, equipment for their maintenance and use, production of clothing, including military clothing, etc.) These processes take place not only at the expense of the state's internal resources but also at the expense of foreign investment in the military sector.

Entrepreneurs are also reorienting their activities from peaceful specialisations to military needs to overcome the consequences of war. An example is the IT sector (developing new programmes to combat cyber-attacks, technologies to combat missile attacks, other military equipment for demining, military engineering, unmanned combat vehicles, etc.) Another example is the healthcare sector, which will receive more requests for prosthetic limbs

and organs; psychological and psychiatric rehabilitation services for military personnel, orphans and others; training of specialists in providing such services in educational institutions, etc.

Since the beginning of 2023, the labour market in Ukraine has been gradually recovering. However, unemployment remains higher than before the Great War and is becoming a structural phenomenon. In particular, occupational and regional imbalances are deepening, which hinders further employment recovery. The consequences of the war (destruction, closure, and relocation of enterprises), the migration of refugees abroad, and the increasing number of internally displaced persons (IDPs) create a situation of mismatch between the geographical location of jobs and the labour force (Karakuts, 2023). Consequences in the field of culture cover the following aspects:

1. The adoption of regulations designed to form, educate, and protect the national identity of the population, as well as rules that support the development of the Ukrainian language as the state language.
2. Preservation of the material resources of culture: relocation of theatres, educational institutions and other cultural institutions from the occupied and frontline territories.

However, questions about relocating art museums and other cultural heritage sites still need to be answered. A sad example is the removal of the artist's paintings from the I.

Aivazovsky Museum in Feodosia by representatives of the occupation forces in 2014 (Sharaievska, 2024).

The consequences of the war are manifested not only through changes in the functioning of the Ukrainian state but also through the illegal behaviour of the aggressor state on the occupied Ukrainian territories, represented by a collaborator government or illegitimately elected leaders in an illegitimate referendum (*Pro nikchemnist psevdoreferendumiv na tymchasovo okupovanykh terytoriiakh Ukrainy*, 2022). The Russian occupation authorities continue to carry out forced passporting of the local population. They are creating conditions under which obtaining necessary services, such as medical and social assistance, is virtually impossible without a Russian passport. People with Ukrainian documents can also be detained and taken to the occupation security forces for filtration.

The economic sphere of the occupied territories of Ukraine is also undergoing changes influenced by the decisions of the occupation authorities. The occupation authorities of the Russian Federation continue to try to integrate the occupied territories into the Russian financial and legal systems. Integration occurs in education, economy, culture, ecology, energy, information, etc. In addition, the occupation of Ukrainian lands has resulted in the unauthorised use of natural resources, the closure of enterprises and the appropriation of business in favour of Russia. This concern mainly concerns forest resources, grain and crops, and machinery and industrial facilities illegally exported to Russia. There is a systematic neglect of environmental safety

and a threat of harmful environmental impact, mainly due to the occupation of the Zaporizhzhia Nuclear Power Plant.

Significant transformations in the functioning of the Ukrainian state occurred due to the war's implementation of its foreign policy.

One of the main results of the Russian-Ukrainian war is the transformation of the global legal order and its mechanisms. Despite the comprehensive support of Ukraine by its partner states, the ineffectiveness of dispute settlement mechanisms through conventions, which were previously perceived as one of the legal mechanisms, has become apparent, as conventions essentially establish a universal mechanism for voluntary, gradual imposition of the will of international organisations or other actors of the world community, and the establishment of obligations (Hrynchak, 2016) (essentially a contractual mechanism for the settlement of relations), which does not take into account the interests of sovereign states. The mechanism of using conventions involves the imposition of a will that is gradually different from that of the acceptor, unlike war, where the imposition of the will of another entity is carried out using its conduct. Self-restraint by states is not a basis for maintaining peace, security and trust (Hrynchak, 2016). Self-restraint is a category of the psychological series associated with the function of governance and the formation of will and will expression, which is formed under the influence of the internal conviction of the state leader alone or several persons with a particular state of mind and formed worldview positions.

Another consequence resulting from the change in the behaviour of the Ukrainian state in its external relations with the world is the lack of ability to work and perform their functions and tasks by international structures and organisations that were conceived and created by their founders as institutions to prevent or mitigate aggressive military actions or their consequences in certain areas of their competence (IAEA, Red Cross, etc.).

IV. Changes in Ukrainian society and its material base under the influence of the war

The social sphere is suffering from the military operations of the Russian Federation on the territory of Ukraine. In particular, the infrastructure (buildings, shelters) and the cultural and educational process are being destroyed in culture and education. In particular, as of February 2024, 3.8 thousand educational institutions, 1.8 thousand cultural institutions, 426 hospitals, 348 religious institutions, 48 social centres, and 31 boarding schools were destroyed. In addition, according to the Ministry of Culture of Ukraine, 1711 cultural infrastructure facilities in 262 territorial communities (17.8% of the total number of territorial communities in Ukraine) were damaged as a result of the war, including next: clubs - 844; libraries - 603; art education institutions - 133; museums and galleries - 100; theatres, cinemas and philharmonic halls – 31 (Cherez rosiisku ahresiiu v Ukraini postrazhdaly 1711 obiektiv kulturnoi infrastruktury, 2023).

Analysing the results of the hostilities in Ukrainian society, we can note a dramatic change in the social structure. This is manifested in intense social mobility - that is, the movement

of people from one social group to another, both vertically (downward and upward) and horizontally (Protsesy sotsialnoi mobilnosti v suchasnomu ukrainskomu suspilstvi, 2014), which has its positive and negative aspects. Travelling abroad, dismissal from work, damage to housing, injuries, and death of loved ones caused a rapid (abrupt traumatic) transition from one social group to another, which can have both positive and negative effects. On the one hand, it is an increase in opportunities (political, cultural, financial, career). On the other hand, migration results in the destruction of social communities and changes in attitudes within the group and between social groups. This is happening both in Ukraine and in the recipient countries of migrants. As a result, there are social complications associated with the view of Ukrainian citizens as migrant labourers.

Since the beginning of the war, there has been a strong volunteer movement. The function of volunteering has changed from serving mainly humanitarian purposes to helping to increase the satisfaction of military requests (installation of drones) (Murashenko, 2024).

The consequence of the loss of property, including housing, against the owners' will is the impoverishment of the present and future generations' population. A long-term result of this is an increased burden on the state budget due to the payment of assistance to displaced persons and persons whose property has been damaged.

The consequences of the war have a direct impact on the cultural sector. For example, the relocation of theatres, educational institutions and other cultural institutions from

the occupied and frontline territories has led to a reduction in cultural events held in the territory controlled by Ukraine, but due to the safety regulations in place when an air raid is declared, it isn't easy to hold them in full. The occupation of Ukrainian lands is accompanied by the imposition of the culture of the occupiers, in particular through the seizure and burning of Ukrainian books (*Rosiiany vyluchaiut i spaluiut ukrainski knyhy na okupovanykh terytoriiakh* – TsNS, 2023) and the destruction of Ukrainian cultural monuments (*Cherez rosiisku ahresiiu v Ukraini postrazhdaly 902 pamiatky kulturnoi spadshchyny*, 2024).

Thus, summing up the abovementioned, we can state that there are changes in the functioning of the Ukrainian state and Ukrainian society. These changes are significant because they result in a structural transformation of the state and society. As of now, it is complex and problematic to assess their final consequences since the military aggression of the Russian Federation is still ongoing; it is not known when it will end and with what consequences (the work was carried out in May-June 2024). At the same time, awareness of their existence, essence and peculiarities allows authorised representatives of the state to take them into account when planning the functioning of Ukraine during the war period and formulating a strategy for its recovery and development after the war.

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Impact of Food Security in Conflict and Peace Building: Human Rights in 21st Century

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introduction

Global food security is rapidly increasing. In 2021, an estimated 29.3% of the global population, or 2.3 billion people, were moderately or severely food insecure, i.e., they did not have access to adequate food. Close to 40% of these estimated 2.3 billion people were facing severe food insecurity, indicating that they had run out of food and, at worst, gone a day without eating.

Driven by the ripple effects of the war in Ukraine, the number of people who are acutely food insecure—i.e., food security—is threatening their causes, context, or duration. soared to a record 345 million people in 2022; this represents an increase of nearly 80% since the end of 2021, when the number of acutely food insecure people stood at 193 million. The concept of the right to food is not new. The right to food has been formally recognized since the adoption of the United Nations universal declaration of human rights in 1948. Nevertheless, in a time of plenty, an estimated 800 million people, primarily in developing countries, are undernourished and food insecure. More disturbingly, the Food and Agriculture Organization of the United Nations (FAO) reports that the number of undernourished people in

developing countries is no longer falling; rather, it is climbing. It is worth noting that more than 40 countries have their own constitutions, and FAO estimates that rights related to food are justifiable or likely to be justifiable—meaning that courts can enforce the right—in a total of 54. Very few countries, however, have elaborated the constitutional provisions into domestic legislation as required by the international covenant.

On 10th December, 1948, the United Nations General Assembly (UNGA) adopted the Universal Declaration of Human Rights (UDHR). Although the concept of food security was posteriorly developed, as an expression of a food security human rights approach on an international level, the declaration in Article 25 pronounced that:

“Everyone has the right to as standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control (unga,1948) (ouremohasis).”

The right to food can thus be seen as a fundamental human right established, along with many others, on the udha. As it will be discussed in this paper, the international references and policies, which followed the UDHR, have linked food security through a people-centered view.

Food and nutritional security and the right to adequate food:

Since the end of the second world war, great famines have erupted in Asia and Africa, and hundreds of people have starved (Ograda, 2009).

During the 1990s, food security was included in the international agenda of several international conferences. Notably, the Rome Declaration on World Food Security and the World Food Summit Plan. Food security exists when “all people, at all times, have physical and economic access to sufficient safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.” according to the World Food Programme (WFP). 60 percent of those experiencing hunger globally live in contexts affected by violent conflict. Ian Deed, since 2010, levels of hunger in conflict-affected countries were rising while there was a downward trend in other developing countries. On average, 24 percent of the population in conflict-affected countries was facing hunger, compared to 16 percent for countries unaffected by conflict. The fact that the number of violent conflicts globally is on the rise gives reason for concern. Since 2010, the number of major violent conflicts has tripled. Furthermore, the previous global declining trend for the number of people killed in armed conflict was reversed in 2021. even before Russia invaded Ukraine in 2022. As mentioned above in 2021, people living in Asia and Africa were affected the most by food insecurity. and the sanctions imposed on Russia by several countries. The war in Ukraine has led to dramatically increased energy and food prices in a short period; prices per ton of wheat rose from USD 271 in September 2021 to USD 389 in March 2022.

Russia and Ukraine provide in total around 30 percent of supplies to the global wheat market, as well as about three-quarters of sunflower oil and one-third of barley supplies.

Food and Agriculture Organization report (FAO):

The right to adequate food is a human right inherent in all people (to have regular, permanent, and unrestricted accesses, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of people to which the consumer belongs, and which ensures a physical and mental individual and collective fulfilling and dignified life free of fear) (FAO, 2010).

During the 2000s, the right to food, settled by the aforementioned agreements, considered the scope of food and nutritional security, termed the “right to adequate food.” With the same meaning of “right to food,” it implies a human rights-based demand for policies and public actions, which comprise the obligations “to respect, to protect, and to fulfill the right to adequate food (FAO, 2010).

By the end of the 1960s, the green revolution and its promise of improved agriculture, booming economies, an increase in food demand, and population expansions brought a feeling of prosperity.

On the other hand, the cultural dimensions of food security and of the right to food also encourage the cultural preferences of small communities.

UN food and FAO report:

Furthermore, initial UN's Food and Agricultural Organization (FAO) estimates covering four months after the Russian intervention in Ukraine indicate that the preliminary damage to Ukraine's agriculture sector is between USD 4.3 and 6.4 billion due to impacts of the conflict, including damages to irrigation, storage, machinery and equipment, shipping infrastructure, greenhouses, field crops, livestock, and processing units.

Food production outside of the immediate conflict epicenters is also affected. Due to the limited availability and heightened costs of fuel, 20–30 percent of the areas in Ukraine where winter crops were sown are likely to remain unharnessed.

Projections for 2023 foresee a continued reduced agricultural output, given the ongoing military activity, presence of landmines, farmers' lack of liquidity, reduced access to fertilizers, less advanced plan protection, and ripple effects from increased diesel and fertilizer costs.

The loss of income, supply chain disruptions, increasing prices, and related dependency on food assistance are the main ways the war limits access to food availability.

The ongoing war in Ukraine has generated one of the world's largest human displacement crises. As of October 2022, nearly one-third of Ukrainians have been forced from their homes; over 7.6 million refugees are recorded across Europe, and over 6.2 million people are displaced within Ukraine, while the humanitarian needs, including food needs, of the Ukrainian civilians fleeing the war are undoubtedly

enormous (the WFP estimates that one in three people are food insecure).

The crisis in Europe has evoked concerns and criticisms of that aid is being diverted from other crises. Obtaining an accurate picture is difficult, as many aid providers have stopped publishing real-time information on official development assistance to Ukraine.

Washington report:-

Likewise, at a 2012 symposium in Washington on global food security, President Barack Obama argued that investment in agricultural productivity that reduces the incidence of hunger and vulnerability “advances international peace and security—and that includes the national security of the United States.”.

Court Case Study:

While the Indian constitution does not enshrine expressly the right to food, the Supreme Court of India decided in the People’s Union for Civil Liberties vs. Union of India case that state failure to implement food schemes and distribution in cases of starvation and risk of starvation, even when there were grain stocks available, amounted to a violation of the right to life, and issued a number of interim measures prompting the state to implement the famine code and detailing a number of measures to be complied with, especially in relation to vulnerable groups.

In a similar vein, the Inter-American Court of Human Rights decided that Paraguayan State had violated the right to life for failing to ensure access to food, water, and health services

to 19 members of an extremely poor indigenous community, 18 of them being children.

The German federal constitutional court and federal administrative court provide examples of the “minimum core content” strategy, deriving from the constitutional principles of the welfare (or social) state and of human dignity. The courts decided that these constitutional principles translate into positive state obligations to provide an “existential minimum” or “vital minimum,” comprising access to food, housing, and social assistance to persons in need.

Similarly, the Swiss federal court, the highest court in Switzerland, ruled that an implicit constitutional right to a “minimum level of subsistence” even for undocumented foreigners could be enforced by courts. The plaintiffs were stateless persons who found themselves in Switzerland with no food and no money; as they had no papers, they could neither work nor leave the country. For the same reason, they were not eligible for social assistance, and cantonal authorities rejected their claim in this regard. The court considered that they had, at least, a right to basic minimum conditions, including “the guarantee of all basic human needs, such as food, clothing, and housing,” to prevent a situation where people “are reduced to beggars, a condition unworthy of being called human.” It therefore ordered political authorities to grant the plaintiffs relief.

Food security is defined by FAO (1996): -

As an availability of sufficient and nutritious food for all people at all times, the concept of human rights was developed to secure every individual’s right to live with dignity and peace. The right to food is everyone’s right to live with happiness, love, and dignity.

The term food security is the convergence of two terms: food and security, which means a person who is secured or feels secure in terms of availability, accessibility, and affordability of food is known as a healthier, happier, and more peaceful person. Most importantly, food security means something more than getting two square meals. In 1996, the World Food Summit addressed that food security includes both the physical and economic access of food that meets people's dietary needs and also their food inclination. World Food Day is celebrated every year around the world on October 16 in honor of the date of the founding of the Food and Agricultural Organization (FAO) of the United Nations in 1945. The reason behind celebrating this day is to raise awareness of issues like poverty, hunger, and malnutrition. According to the FAO, close to 150 million children in countries around the world are stunted because of a lack of proper nutrition. Food is the most basic human right." said FAO. Food has long served as a carrier of culture in human societies and has been a driving force for globalization. un declares October 16th, 2016 as a world food day. Food is known as a substance of accurate protein, carbohydrate, fat, and other nutrients.

Food security in the 21st century means a comprehensive understanding of human rights and human development concerns in their practical meaning.

21st century is "food wars," meaning that food is used as a weapon, food systems are destroyed in the course of conflict, and food insecurity persists as a legacy of conflict. Food insecurity, as used here, can denote food shortage, lack of access to food, undernutrition, or some combination of the three and can also be a source of conflict.

Food is a basic need required by human beings at any level of development and in any situation. It is the source of nutrients that provides and contributes to the very existence of human beings and also forms the basis of life. The overall emotional, psychological, physical, cognitive, and psychomotor development of the human being is dependent on consumption and coping strategies with regard to food availability to the household and the larger community. In fact, food may form the reason for conflict and also has the capacity to provide the answer for conflict resolution. In any conflict situation or disaster, food security.

According to FAO, climate change will aggravate the living conditions of people who are already vulnerable, increasing hunger and malnutrition. The main risk group is people living along coasts, in floodplains, mountains, dry lands, and the arctic. Extreme weather changes have adverse impacts on food production, food distribution infrastructure, and livelihood opportunities in both rural and urban areas. Temperature changes, rainfalls, and rising sea levels affect the suitability of land, the productivity of forests, the incidence of pests and diseases, the biodiversity, and the whole ecosystems (FAO, Climate Change).

Today, peace building is soured by the awareness that there are limits to violence. We can forget sustainable development if no serious efforts are undertaken for preventing violence and building sustainable peace.

Since the end of the Second World War, many scholars have been in increasing demand for peace research, and its findings are now being used by decision-makers and practitioners. The European Union (EU), one of the leading international bodies to affirm the importance of peace

building and conflict prevention, is building up its capacity for these activities (Moyroud, Lund, and Mehler, 1999).

Ukraine FACT:-

As the war in Ukraine continues, civilians are being injured and killed at alarming numbers. Some 5.1 million people are internally displaced within Ukraine, while more than 6.2 million Ukrainian refugees have fled the country. Attacks have targeted civilian infrastructure. There have been over 1,000 attacks on health care facilities and 2,500 attacks on schools recorded. Almost 10,000 civilians have been killed.

WORLD HEALTH ORGANIZATION REPORT ON CONFLICT:

Each year, more than 1.6 million people worldwide lost their lives to violence. For every person who dies as a result of violence, many more are injured and suffer from a range of physical, sexual, reproductive, and mental health problems. Violence places a massive burden on national economies in health care, law enforcement, and lost productivity.’ ‘Today’s human rights Violations are the causes of tomorrow’s conflicts.’ (Mary Robinson) 8 million light weapons are produced each year. 2 bullets are produced each year for every person on the planet. 2 out of 3 people killed by armed violence die in countries “at peace.” 10 people are injured for every person killed by armed violence. Estimates from www.controlarms.org

The current world population of 76 billion (21st June 2017) is expected to reach 8.6 billion in 2030 and 9.8 billion in 2100. Now the question is how to feed the world’s population in 2100. Outlook for food security towards 2050. Changing socio-economic environment. In the natural resource base to

2050, will there be enough land, water, and genetic diversity to meet demand and potential food security?

By 2050, the world's population will reach 9.1 billion, i.e., 34% bigger than today. About 70% of the world's population will be urban (now 49% urban as of 2024). In order to feed this larger, more urban, and richer population, food production (net of food used for food) must increase by 70%. Annual cereal production will need to rise to about 3 billion tons from 2.1 billion today. This report argues that the required increase in food production can be archived if the necessary investment is undertaken and policies conducive to agricultural production are put in place. But increasing production is not sufficient to achieve food security.

Adoption of modern technology in agriculture:

The increasing role of technology in agriculture to address these issues is the only way forward to a food-secure future. Food which adoption of modern technology like increase of genetic engineering, A.I., use of drones, GIS technology, Farmer call centers. Agriculture Market App, E-Technology in the Aid of Farmers For example, genetic engineering has made it possible to introduce certain strains into other genes of crops so that the whole world's farmers are in a position to electrify every process for efficiency and improved production and productivity. The world's agriculture depends on various factors such as socioeconomic condition, geographical condition, crop grown, irrigation facilities, etc.

Conflict, Peace building, and Human Rights in the 21st Century:

There are two types of armed conflict: one is international and another is internal. War is perhaps the most patent threat

to global peace. It is considered a state-armed conflict between regular and irregular military forces. Civil wars that were very common in the whole world. White (2011) declared that the deadliest war in history, in terms of cumulative number of deaths since its start, is the Second World War, from 1939 to 1945, with 60-85 million deaths. The threats posed by World Wars 1 and 2 still live with humanity.

In this regard, it may be mentioned that the founder of Satsang in India, Sri Sri Thakur Anukul Chandra Chakraborty, said, “Do never die, nor cause death; but resist death to death.”

Conclusions and Suggestions

This paper examined the impact of food security in conflict along with peace building and how conflict directly impacts food systems around the world, affecting farmers’s ability to produce and supply. This study reveals and finds out how agriculture technology has revolutionized ways to feed growing global populations and has a significant impact on food security and peace building. This study revealed that on average, 24% of the population in conflict-affected countries was facing hunger, compared to 16% in countries unaffected by conflict. This paper also finds out that the Russia-Ukraine war affected the global wheat market, sunflower oil market, and increased food prices in a short period. War in dilate that the preliminary damage to Ukraine’s agriculture sector due to conflict damages to irrigation, storage, machinery and equipment, greenhouses, fields, crops, livestock, and processing units. Over 7.6 million refugees are recorded across Europe, and over 6.2 million people are displaced within Ukraine due to international conflict between Russia and Ukraine.

From the study, the following suggestions are forwarded for consideration of the whole world and society for the interest of human rights and for the interest of humanity:

- 1) For the interest of humanity, whole world society should come forward to stop conflict within the state and international level.
- 2) During war it should be considered that farmers and agricultural crops should not be damaged in any way because agriculture feeds the whole world's population.
- 3) To minimize the war equipment and to increase and enhance modern agricultural equipment and tools to increase productively food security for the next generation of the world.

Proposal for Future Research:

From the study, it is found that conflict can be stopped if whole world societies follow the philosophy of Sri Sri Thakur Anukul Chandra Chakraborty, which is **“Do never die, nor cause death; but resist death to death.”**

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The Problem of Gender Disparity in Higher Judiciary: An Analysis

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INTRODUCTION

India, a country with glorious history has entered into the celebration of its semi sesquicentennial anniversary of Independence occasioned as “*AzadikaAmritMahotsav*” or ‘Elixir of energy of Independence’. The holistic approach of aforesaid history through various available records discloses that on many instances women class had executed an unprecedented imperative functions and responsibilities towards the development of Indian society. Whether it is the notion of ‘justice’, ‘learning’ or ‘land’, all these abstractions had been always represented prodigiously in feminine context by personifying them as deity with its entire aureole and order. Underlining the female stature of *GargiVachaknavi* and *Maitreyi* from Vedic period, both these women are considered remarkable icon as philosopher and expounder of

the *Vedas*³. Similarly, the contribution of women in Constituent Assembly is pertinent to cite for recognizance of their participation in development of the Nation⁴. These specifics represent the stature of women in legal and political sectors of the society. Post-Independence, when notion and principle of equality⁵ has been constitutionally recognised and discrimination on the grounds of sex has been prohibited⁶ deliberations over representation of women by ensuring their participation in every institution and sector, whether it is governmental or non-governmental, has been raised and discussed widely. It is known that the principle of equality in its absolute form is unfeasible to achieve but nothing can be logically presumed to be an impediment whilst adhering to the principle of proportionate equality. As a result, discussion emanates for ensuring representative membership of women in various organs of the Government including higher judiciary. The expression ‘Justice’ is usually manifested as “Lady of Justice” in the form of a blindfolded woman, who holds a scale on one hand and clutches a sword on another. This portrayal of Justice symbolizes the principle of fair adjudications, impartiality and transparency, objectivity of the law and un-influential dispensation of verdict. Despite the popular above mentioned portrayal and delineation of the women class in an esteemed manner, the

³Gargi and Maitreyi: Female Figures of Vedic India, Indian Astrology (2019), available at: <https://indianastrology.co.in/6545-gargi-and-maitreyi-female-figures-of-vedic-india/> [accessed on 18/06/2022].

⁴ Ministry of Culture (2022), available at: <https://amritmahotsav.nic.in/blogdetail.htm?48> [accessed on 18/06/2022].

⁵ Article 14 of the Constitution of India.

⁶ Article 15 of the Constitution of India.

existing representation of women in vocation as Judge in the Supreme Court and High Courts do not permit to factually commemorate the achievements of glorious history especially when India is a sovereign nation.

Succeeding all other times, an international body like United Nations had become the flag bearer for protection of human rights amongst the signatories by highlighting the importance of gender equality in a world where majority of the leading institutions are presided by the men, while women remains with fewer access to available resources, quality of education and participation in political spheres of life. The United Nations Economic and Social Council through its Commission on Status of Women formed in year 1947, performed a dynamic role by enlarging the Commission's mandate via guaranteeing the implementation of Beijing Declaration and Platform for Action⁷ through its resolution in the year 1996 and which not only brings recognition to women rights as part of human rights but also acknowledges the necessity of women empowerment in all the spheres of life and in particular within the institutions of Governance as a foundation for the development of a Nation. In addition to the Beijing Declaration, various international covenants had also imposed certain obligations on the states for implementation of diverse measures and to appropriately regard the broader issues of gender disparity as well as removing legal, structural, and institutional obstacles

⁷ Beijing Declaration and Platform for Action, adopted at the 16th Plenary Meeting, on 15 September 1995.

distinguishing women's equal access to the justice sector⁸. Correspondingly, the Convention on the Elimination of all Forms of Discrimination against Women under its Article 7 obliges State parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country. Thus, directing a mandate for ensuring and securing the adequate participation of women class in all the major organs of the Government.

Encompassing social diversity and representation of women would only pilot the positive interactions of contribution towards the justice delivery system by practically incorporating the idealism of democracy in a concrete manner and not in vain. The participation and representation of women in higher judiciary, hitherto, has remained minuscule which results in the problem of gender disparity in such judicial institutions. The elevation and appointment of judges in the Supreme Court and various High Courts are given effect by the recommendations of the collegiums system together with the assistance of other governmental machinery. This unequalled system for appointment of judges is in liberty to follow their own sets of rules and procedures while making recommendations of any judicial officer or advocate for elevation and appointment to the said courts. In reference to the topical dilemma, the apex court had recently declared the inclusion for the provision of National Judicial Appointment Commission brought by the Constitution

⁸MónicaCastillejos-Aragón, *A need for change: Why do women in the judiciary matter?*, Konrad Adenauer Stiftung, Country Report, Pg. 07, 2021.

(Ninety-Ninth Amendment) Act, 2014 as unconstitutional⁹. Additionally, it is pertinent to mention that, the Government of India through its press publication¹⁰ had apprised the present situation in relation to the appointment of women judges in higher judiciary and had briefed about related matters which are under consideration thereof. Consequently, on observation of the above, nothing can be inferred to be stymied for the collegiums system and involved government machineries which might prevent them from making considerations and recommendations of the woman judicial officers and advocates for elevation and appointment as Judges in the Supreme Court and the High Courts. But the same stands uncalled for when observed under the veil of practical implementation.

The arguments advanced in favour of women representation in higher judiciary had lately gained much momentum in prominence on contrary to the prevailing patriarchal temperament in higher judiciary. Profession of law had constantly reflected the disposition of male domination and hierarchy. The prevailing norms and ideologies of the society had also played a significant role while setting up the progress and development of women in the field of litigation and judiciary. Considering from the British period, due to the then prevailing stereotypes of the society, women were

⁹ Supreme Court Advocate-on-Record Association vs. Union of India [(2016) 4 SCC 1].

¹⁰ Ministry of Law and Justice, *Women Representation on Benches*, Press Information Bureau (2022), available at [:https://pib.gov.in/Pressreleashere.aspx?PRID=1812345](https://pib.gov.in/Pressreleashere.aspx?PRID=1812345) [accessed on: 20/06/2022] .

hardly encouraged to join the profession of law and they were kept restricted within the premises of household activities and chores. Cornelia Sorabji, the first woman advocate in India¹¹, broke this established stereotypical notion of the society and paved the way for women participation in the field of legal vocation. Though, it is imperative to discuss the participation of women as a class in higher judiciary, collaterally the concept of social diversity must be included for consideration. Women itself is considered as a class but it is inclusive of members from different segments of the society like Scheduled Castes, Scheduled Tribes and Minorities. For this reason, ensuring the overall proportionate participation of women class together with all its social divisions must be contemplated in higher judiciary. It may be discovered from the available accounts that women took legal fields late and therefore to determine the equal representation of women in judiciary will take time, unless the contemporary procedures of judicial appointment are amended by directing the appropriate governments and the judiciary, jointly to ensure and secure the adequate representation of women in higher judiciary.

Gender Representation in Higher judiciary

Appointment of Judges in the Supreme Court and the High Courts are made by the virtue of Article 124, 217 and 224 of the Constitution of India. These Articles neither provide for

¹¹K.S.S.Sheshan, *Cornelia Sorabji: Woman of many accomplishment*, The Hindu (2020), available at :<https://www.thehindu.com/society/history-and-culture/the-hindu-friday-review-telangana/article30586015.ece> [accessed on 20/06/2022].

the policy of reservation in such appointments nor expressly acknowledge the principle of adequate representation. The manner of appointment of judges to the Supreme Court and the High Courts in India is implemented by the collegium system which makes it exceptional to the existing procedures for appointment of judges in higher judiciary followed in any other countries. The collegium system had attracted a range of criticisms on major grounds like lack of transparency, potential nepotism and ignorance of aptitudes of junior judges and advocates. The appointments and transfers of Judges of the higher judiciary has been evolved through *Three Judges Case*¹², amongst which the collegiums system was introduced in *S. P. Gupta case*¹³, but all of which are silent on the subject for ensuring women appointments and their representation in higher judiciary. On thorough observation, it can be construed that this system of judicial appointment is not guided by any constitutional mandate and therefore they are in autonomy to deduce their own sets of rules, regulations and procedures in making arrangements for women representation in judiciary. As a result, the collegiums system without any encumbrance is eligible to decide and appropriate on the basis of the principle of adequate representation and gender diversity to consider the appointment of woman judges and advocates in the Supreme Court and the High Courts. The appointment of judges in Apex Court or High Courts has always been a moot point with observations done on the recommendations sent by

¹² *S. P. Gupta vs. Union of India* [AIR 1982 SC 149]; *Supreme Court Advocates-on-Record vs. Union of India* [AIR 1994 SC 268] and; *In Re Presidential Reference* [AIR 1999 SC 1].

¹³ *Ibid.*

collegiums system to the Government which negligibly shows a woman representation. For instance, it is prevailing credence in the legal profession that a woman should present herself gracefully, whether as an advocate or as a judge, without showing a tint of aggression unlike the male counterpart which might project the dual values. Simultaneously, discussion on problems of gender disparity in higher judiciary from women legal fraternity is not sufficiently encouraged.

The Supreme Court of India came into existence with commencement of the Indian Constitution¹⁴ and Justice Fathima Beevi became an anomaly by being the first ever woman judge who was appointed to this Court in 1989, which happened 39 years after the apex court came into existence. This lethargic instance of appointment of a female judge itself describes the prevalence of patriarchal ruling over this supreme institution. Adjudging this tradition only, Justice Fathima Beevi was reportedly in favour of Reservation for women class in judicial appointments which could possibly increase the number of women judges at the higher judiciary¹⁵. It was for the first time on record that a member from the judicial fraternity had brought attention towards securing the representation of women and implementation of

¹⁴ <https://main.sci.gov.in/history#:~:text=Supreme%20Court%20of%20India%20came.and%20a%20spacious%20colonnaded%20verandah>.

[accessed on 20/06/2022].

¹⁵ KiranManral, *'I opened a closed door' – FathimaBeevi, India's 1st woman judge in SC who remains an enigma*, The Print (2022), available at: <https://theprint.in/pageturner/excerpt/i-opened-a-closed-door-fathima-beevi-indias-1st-woman-judge-in-sc-who-remains-an-enigma/862301/>

[accessed on 20/06/2022].

social diversity in higher judiciary by holding up for the application of policy of reservation in judicial appointments and which will further secure opportunities for woman judicial officers and advocates to be represented in higher judiciary. The absence of diversity on the sole reason of gender amongst the judges in higher judiciary leads to illustrate the lack of trust upon judiciary by women class.

With recent endeavor of the collegiums system to elevate 3 women judges to the Supreme Court¹⁶ against the current strength of overall 34 Judges which includes 4 women judges are numbered for being the highest ever in its history .Since 1950, only 11 women judges have been able to become part of the Supreme Court with no women Chief Justice of India so far¹⁷. However, recently a historic moment is poised with the appointment of Justice B. V. Nagarathna in the Supreme Court who on the principle of seniority could be the first Woman Chief Justice of India. Furthermore, in case of the High Courts, so far just 83 out 680 judges are women which highlights on the gravity of problems that how disproportionately women have had exposure in such Courts¹⁸. Justice Leila Seth holds the position of being the

¹⁶. UtkarshAnand, “CJI calls for women’s equal representation in judiciary”, The Hindustan Times (2021), available at: <https://www.hindustantimes.com/india-news/cji-calls-for-women-s-equal-representation-in-judiciary-101632696419660.html> [accessed on: 21/06/2022].

¹⁷ Shreya sharma, “India needs more women judges, but judiciary has long way to go”, The Print (2022), available at: <https://theprint.in/campus-voice/india-needs-more-women-judges-but-judiciary-has-a-long-way-to-go/976666/> [accessed on: 19/06/2022].

¹⁸ Ibid.

first female Chief Justice of a State High Court in 1991¹⁹ and Justice Hima Kohli remained the only female Chief Justice of a State High Court in 2021²⁰. The current statistics shows bewildering data that contemporarily not a single woman judge is incumbent as Chief Justice of any State High Court²¹. Since the elevation of judges in these courts are given effect from learned advocates practicing in bar, senior judges from subordinate judiciary in case for the High Courts and from High Courts in case for the Supreme Court, on observing the above instances one may assume that a country like India might not be having enough women representation in legal fraternity. However, around 15% of all enrolled advocates are women²², which is an extremely small section in comparison to their male counterparts. It is not as if women entering in the legal profession do not form adequate

¹⁹Gauri Kashyap, *Women in the Judiciary- Have We Come Far from the 30s ?*, Supreme Court Observer (2021), available at: [https://www.scobserver.in/journal/women-in-the-judiciary-have-we-come-far-from-the-30s/#:~:text=The%20first%20ever%20woman%20judge,a%20High%20Court%20\(1991\)](https://www.scobserver.in/journal/women-in-the-judiciary-have-we-come-far-from-the-30s/#:~:text=The%20first%20ever%20woman%20judge,a%20High%20Court%20(1991)) [accessed on: 20/06/2022]

²⁰ SCO Team, *Only One High Court has a Woman Chief Justice*, Supreme Court Observer (2021), available at: <https://www.scobserver.in/journal/only-one-high-court-has-a-woman-chief-justice/> [accessed on: 20/06/2022].

²¹ Ministry of Law and Justice, Government of India, *List of Chief Justice of the High Court*, Department of Justice (2022), available at: <https://doj.gov.in/list-of-chief-justice-of-the-high-court/> [accessed on: 20/06/2022].

²²Lalitha Panicker, *“The legal profession must ensure balance: Analysis”*, The Hindustan Times (2020), available at: <https://www.hindustantimes.com/analysis/the-legal-profession-must-ensure-gender-balance-analysis/story-zXAKhye28e9ihWXV4GetRK.html> [accessed on: 20/06/2022].

strength as compared to earlier times which can be said to impede their recommendations and considerations, as the existing trend reflects that Law being a viable profession is pursued in adequate numbers in academics, not just by men but also by women. They avail these opportunities either through Common Law Admission Test Examination Scheme conducted for admission in various National Law Universities or through other examination schemes for different State Law Universities or Colleges. It is an upsetting situation to know that only a handful of women law graduates have preferences towards litigation over joining the academics or judicial services. Nevertheless, this issue of gender inequality which is visible in higher judiciary emanates from practise of gender biasness which the women experiences therein.

The principle of adequate representation as enshrined under provisions of the Indian Constitution is also an integral facet which cannot be left unnoticed while considering the participation of women in higher judiciary. The women as a class also include members belonging from Scheduled Castes, Scheduled Tribes and Minorities. Participation of women judges and advocates belonging from such sections of the society are also required to be secured in higher judiciary. Nothing has been brought forward in any manner through any documentary records which suggests the supposition or which percolates amongst legal fraternity that woman judges and advocates from above said marginalized sections do not form part of the population of incumbent judicial officers or advocates in practice. The judicial appointments in subordinate judiciary are given effect by following the three

tier examination scheme wherein applicability of the policy of reservation secures the participation of female judges in lower courts. But as the judicial appointments in higher courts are not done through any scheme of entry examinations, the women belonging from marginalized sections do not have any representation therein. The population of women judges and advocates belonging from marginalized sections of the society constitute in less strength but they subsist. In absence of availability of any quantifiable data, which in general, is expected to be maintained either by the appropriate government or judiciary or by the joint efforts of both, it is difficult to ascertain the statistics about overall strength of woman judges who had been ever provided with super time scale and confirmation during their service tenure making them eligible for recommendations in higher judiciary and woman advocates in practise who had at any interval of time been considered to be elevated or recommended as the Judge of the High Court of any State or to the Supreme Court, belonging from such marginalized sections of the society. This unfortunate state of affairs, therefore, indicates the failure of ensuring social diversity amongst the fewer appointed women judges in higher judiciary. Comprehensively, this problem of women representation upholding social diversity also requires supplementary attention while making appointments in the Supreme Court and the High Courts.

Why Women Judges matter

Fundamentally, the judiciary has been bestowed with distinct functions and responsibilities for interpretation of the prevailing laws, securing and protecting the rights, liberty and interests of individuals, powers of judicial activism and judicial review which on the whole determine its separate embrace from that of the Legislature and the Executive. And while the system of checks and balance plays an essential function in guaranteeing stability in the legal system, it is the Courts that have the ultimate responsibility for maintaining and preserving the Rule of Law²³. By virtue of the *State of Kerala vs. N. M. Thomas*²⁴, the judiciary can now be inferred as ‘State’ for the purpose of Part IV enshrined under the Constitution of India, and therefore they are deemed to be obliged in securing the operation of legal system by promoting justice on basis of the principle of equal opportunity and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities²⁵. It can also be further argued that as a guardian and sentinels of the Constitution of India, the Court must always be as much duty bound to defend and give effect the directive principles as to the fundamental rights

²³MónicaCastillejos-Aragón, *A need for change: Why do women in the judiciary matter?*, Konrad Adenauer Stiftung, Country Report, Pg. 06, 2021.

²⁴(1976) 2 SCC 310.

²⁵ Article 39A of the Constitution of India.

irrespective of their inclusion within the definition of ‘State’²⁶.

This sacrosanct position of judiciary imposes interminable responsibility in dispensation of justice broadly within the social order. The predominant reason amongst others is that having an adequate representation of women judges in higher judiciary will motivate gender sensitization in dispensation of opposite justice. It is imperative to quote a latest instance, where the Supreme Court in a judgment²⁷ voids and comments ‘highly unacceptable’ about the bail order granted to the accused molester by the High Court of Madhya Pradesh on condition of tying *Rakhif* from the female victim. In this case²⁸, the honorable Supreme Court was urged to issue directions on gender sensitization of the bar and the bench, particularly with regard to judicial empathy for the prosecutrix. Various suggestions in this regard had been submitted in the said case by the Attorney General which includes imparting training to the judicial officers of all levels about gender sensitization and inclusion of related subjects in curriculum of law schools and in examination pattern of the Bar and so on. This whole additional state of developments would have been obviated if the Court granting bail had been presided over by a woman judge. Similarly, the growing empirical research and various studies conducted indicates that women judges contribute further in improvement of

²⁶Mahendra P. Singh, *V. N. Shukla’s Constitution of India*, Eastern Book Company, (Ed. Eleventh reprinted, 2012), Pg. 34.

²⁷ Ibid.

²⁸ *Aparna Bhat and Ors. vs. The State of Madhya Pradesh* [Criminal Appeal No. 329 of 2021; 2021 SCC OnLine 230].

access to justice for women, by supporting women's specific justice needs across a range of issues²⁹. Greater participation of women in judicial profession, particularly at senior levels, can also help to reduce gender stereotypes and increase women's willingness to enforce their rights³⁰. The President of the International Association of Women Judges had also noted that, participation of women judge is strengthening judiciary and it will help to gain public trust³¹. Considering the prevailing social traditions of Indian society, in time of globalization it still demonstrates application of gender biasness towards female victims of crime. It is coherent to deduce that numerous cases of crimes committed against females in India go unreported due to the reasons of embarrassment, public shaming, stake to reputation, fear of retaliation and the likes of the female victim and her kin. By having adequate representation of women judges in higher judiciary, it will enhance the legitimacy of courts and will project an influential indication about its accessibility for female victims in recourse to justice. Consequently, it will act as a motivating factor for female victims of crime to knock upon the doors of the courts independently, exclusive of any hesitation and anxiety of social stigma. Representation of

²⁹ Supra 19.

³⁰ OECD (2017) <https://www.oecd-ilibrary.org/sites/2f520410-en/index.html?itemId=/content/component/2f520410-en> [accessed on 21/06/2022].

³¹ Judge Vanessa Ruiz, *The Role of Women Judges and a Gender Perspective in Ensuring Judicial Independence and Integrity*, UNODC, available at: <https://www.unodc.org/dohadeclaration/en/news/2019/01/the-role-of-women-judges-and-a-gender-perspective-in-ensuring-judicial-independence-and-integrity.html> [accessed on: 21/06/2022].

women judges in higher judiciary will also inspire the women class to join the legal profession. Therefore, these above episodes give emphasis to the necessity of woman representation in higher judiciary.

Merits and efficacy

The advent of collegium system through its procedure had derived various underlying criteria to be taken on consideration while making judicial appointments to the Supreme Court and the High Courts. The consideration of factors such as judicial integrity, seniority on all India basis, meritocracy, judgment quality, reputation, efficacy, service promptness etc. are some measuring rods while making recommendations of judges and advocates for the higher judiciary. Amongst all, Meritocracy criterion still remains ambiguous and no yardstick determines the unerring interpretation of the essential ingredients which will constitute merit in judicial appointments. These criteria are also applicable on elevation and appointment of women judges and advocates in higher judiciary. No empirical data exists which suggest that women judges and advocates do form an inconsiderate number in subordinate judiciary and litigation, which may be held to be the cause of probable conditions of them for not being elevated and recommended in such judicial appointments. Likewise, no scientific study reports that women judges and advocates lack meritocracy. If someone says so, it is absolutely the outcome of incorrigible bigots. On contrary, the personal experiences of woman judicial officers and advocates, when happen to be available in public domain, seeks attention and which questions the

practise of professional prejudices radiating from their male counterparts³². However, it is not justifiable to draw a general perception on the basis of incidence of fewer instances of gender based prejudices while considering its applicability against one vulnerable class and thereby concluding it absolute against the another class.

As stated earlier, the perceptible representation of women in higher judiciary supplements in improvisation of the judicial efficacy in dispensation of gender sensitized justice. Though it may be debated on contrary by citing a recent instance of controversial ‘skin to skin contact judgment³³’ pronounced by a female judge of the Bombay High Court, Nagpur Bench, which was later quashed and set aside in a verdict³⁴ well defined by the Supreme Court. These existing illustrations must be interpreted under the purview of exceptions as it reflects only the error of statutory interpretations and for which judicial remedy in forms of appeal, special leave petitions etc. exists to deal decisively. This should not be considered as an absolute ground to judge the meritocracy and efficacy of overall women judges and advocates in judiciary and legal profession. Simultaneously, the recommendation of women judges and advocates in higher judiciary must be ascertained mandatorily by setting up an absolute mechanism for considering them on the basis of any

³² Soni Mishra, *The Sexiest Bar*, The Week (2016), available at: <https://www.theweek.in/theweek/cover/gender-discrimination-in-judiciary.html> [accessed on: 22/06/2022].

³³ Satish S/o. BanduRagde vs. The State of Maharashtra [Criminal Appeal No. 161 of 2020].

³⁴ Attorney General For India vs. Satish and Another [Criminal Appeal No. 1411 of 2021].

devised appointment criteria of judges in higher judiciary in proportionate to their male counterparts. Accordingly, in such a manner the proportionate representation of women in higher judiciary needs to be ascertained otherwise it may give rise to the situation of “reverse gender disparity” which will then again accelerate the incessant loop of gender based representation in higher judiciary.

In a recent attempt, the Supreme Court Bar Association has constituted a ‘search committee’ to identify and recommend meritorious Advocates practicing in Apex Court for their elevation as learned High Court judges across the country³⁵, which is unvoiced especially with respect to any consideration of women advocates for such recommendations. This initiative of the Supreme Court Bar Association might be praised but it does not expressly devise a general framework to determine the notion of meritocracy and its applicability for making recommendations of advocates. Simultaneously, it does not encompass the parameters for women advocates for their recommendations to the High Courts. As mentioned, women as a class is inclusive of women having membership of Scheduled Castes, Scheduled Tribes and Minorities, the above proposal of coarse framework of ‘search committee’ do not reflect any specific mentioning for any suggestion on women advocates belonging from above marginalized sections of the society.

³⁵ Ashish Tripathi, “SCBA forms ‘search committee’ for elevation of lawyers from top court as HC Judges”, The Deccan Herald (2021), available at: <https://www.deccanherald.com/national/scba-forms-search-committee-for-elevation-of-lawyers-from-top-court-as-hc-judges-995224.html> [accessed on 21/06/2022].

Hence, the eligibility for appointment of advocates on basis of meritocracy and efficacy should distinctly be described while considering recommendations of women judges and advocates for ensuring their participation in higher judiciary.

Conclusion

It is unfortunate that, despite being sovereign and republic for more than seven decades, the representation of women in Indian higher judiciary shows trifling circumstances. It therefore, reflects the customary male dominance and hierarchy in the setup of Judiciary. A unique mechanism from judicial decisions has been devised named as Collegium System, which is responsible for the recommendation of judges and advocates to the Supreme Court and High Courts. It is bewildering to note that even though said system of judicial appointment is not expressly bound by the mandates of provisions enshrined under the Constitution of India or any other statutory provisions regarding such appointments, it does not reflect conscientious inclination for securing and ensuring the adequate representation of women class in higher judiciary. With respect to woman appointments in judiciary, prima facie, no distinct quantifiable data is prepared or maintained either by the Judiciary or by the appropriate Government or by the joint efforts of both, which may expressly record the precise figures about women representation in Judiciary. Women class itself is considered as a unit under social hierarchy; however, it also includes certain segments from marginalized sections of the society. Therefore, the principle of adequate representation as enshrined under the Constitution of India must be given a

realistic approach rather than recognizance as black letters on paper. Additionally, as a means for securing adequate representation of Women in higher judiciary the inclusion of policy of Reservation as recognized under the provisions of Indian Constitution must be given effect by the way of constitutional amendment of the provisions dealing with the appointment of judges in higher judiciary. This move will directly secure the participation of women in higher judiciary and thereby will ensure their adequate representation. This issue wraps multidimensional aspects and therefore requires further research to adequately derive additional mechanisms, which will aim to secure adequate representation of women in the Supreme Court and the High Courts and which will facilitate to do away with the prevailing problem of gender disparity in such courts.

Legal Rights, Issues, and Challenges for Organ Donors in India

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I. Introduction:

The modern understanding of human organ transplantation has been shaped by a complex and challenging journey, filled with obstacles and critiques. Efforts to repair damaged human tissue have a long and rich history in the field of medicine. Historical manuscripts found in India dating back to the sixth century BCE provide detailed documentation of the intricate procedures involved in plastic surgery. Tissue replacement initially relied on skin grafting, which was widely recognised as the preferred method. Since the beginning, this approach has allowed for the potential for an external individual to donate the skin graft on behalf of the patient. In the 1600s, surgeons started to seriously explore the concept of donor-to-patient skin grafting. With the advent of medical advancements, the idea that diseases could be caused by organ defects started to emerge. This led medical practitioners to set their sights on broader objectives in the field of organ transplantation. The availability of anaesthesia

and infection-prevention techniques during the 19th century increased the appeal of surgical procedures.³⁶

In the early 1950s, doctors started witnessing advancements towards the long-awaited achievement of successfully transplanting human organs from donors to recipients by overcoming immunological barriers. One of the main challenges faced in human organ transplantation was the consistent rejection of foreign objects by the immune system, with only a few exceptions. This phenomenon of foreign body rejection is pervasive across all forms of life, making it initially insurmountable and impervious to any medical intervention. Many medical professionals acknowledge and highly value the body's consistent and widespread ability to reject foreign substances. They firmly believed that any effort to overcome or bypass this rejection would be futile and go against the body's natural inhibitions.

As a result, those who were pioneers in the field of organ grafting faced significant challenges, both in terms of the scientific hurdles they had to overcome and the criticism and even hostility they received from their colleagues. Although, early transplants from the 1950s and 1960s are now seen as commendable, they were not widely regarded as such during that time. Despite the initial slow recognition, the groundbreaking research is now widely regarded as one of the most significant contributions to the field of surgery. Surgeons who excelled in their field consistently received international recognition. By the end of the twentieth century,

³⁶ Vijay Pothula, Sushruta and Indian Rhinoplasty, 30 ENT & Audiology News 1 (2021).

human organ transplantation had made significant strides in achieving clinical success and had gained widespread acceptance and agreement. Continued efforts to push the boundaries of transplantation science have led to the discovery of new targets.

Right from the beginning, there was extensive involvement of legislation and legal regulations regarding the transplantation of human organs and tissues. There were initial legal concerns that arose, mainly regarding the jurisdiction over the deceased's remains. During the 1950s, there was an increase in the use of corneal grafting, leading lawmakers to introduce regulations aimed at streamlining the process of acquiring donated tissues. Due to the introduction of renal organ donation in the 1960s, additional legislative changes were required. There were many moral, legal, and social controversies surrounding the legislative changes, particularly regarding the proposal to implement the concept of brain death in intensive care units for organ retrieval. Nevertheless, laws regarding organ and tissue transplantation often struggle to keep up with the rapid advancements in the medical field.

Considering the historical progression of the medical procedure of organ transplantation, we can now delve into the current legislation that governs the process in India. In 1994, the Transplantation of Human Organs and Tissues Act was passed in India. This legislation was a response to the concerns expressed by various stakeholders about the exploitation of underprivileged individuals who are deceived into donating organs for minimal compensation, often

without fully comprehending the potential repercussions of their decisions. Illicit organ harvesting is a widespread problem that extends far beyond our nation's borders. Terms such as "Donors" and "Transplantation" are legally defined. Not only has it made commercial transactions illegal, but it has also put in place penalties for those who violate the law. Although the legislation has received some criticism for being hastily and poorly drafted, it has managed to establish some regulation regarding the organ trade.³⁷

II. The Transplantation Of Human Organ And Tissues Act:

As per the provisions of Clause (1) of Article 252 of the Indian Constitution, the "Transplantation of Human Organs and Tissues Act (THOTA)" was enacted by Parliament, with resolutions passed by the legislatures of Goa, Himachal Pradesh, and Maharashtra in both houses. With a focus on intellectual rigour, the legislation aims to establish comprehensive regulations that govern the extraction of organs from both living and deceased individuals. Additionally, it strictly prohibits any commercial transactions involving human organs. Despite the presence of laws, the human organ trade has received significant attention in both print and electronic media, supposedly resulting in the exploitation of individuals from lower socioeconomic backgrounds. Later on, the Hon'ble High Court of Delhi formed a committee to analyse the shortcomings in the

³⁷ Joseph E. Murray et al., Prolonged Survival of Human-Kidney Homografts by Immunosuppressive Drug Therapy, 268 *New Eng. J. Med.* 1315, 1318 (1963).

implementation of the Act. The committee's findings resulted in the amendment in 2011.

Currently, the THOTA covers a wide range of definitions, including the introduction of terms like "brain-stem death" in this legislation for the first time. The Act provides a comprehensive overview of the authorization process for organ retrieval in Chapter Two. It outlines the individuals who have the authority to grant authorization, the circumstances in which authorization is allowed, and the restrictions on when removal is possible. The third chapter delves into the topic of hospital regulations. The fourth and fifth chapters delve into the power and structure of the Appropriate Authority, as well as the criteria for registering, suspending, and cancelling hospitals and tissue banks. In the sixth chapter, the law outlines the consequences for breaking its rules, such as making it a crime to engage in commercial transactions involving human organs and participating in the illegal trade of human tissues.³⁸

The Act is further supported by the Transplantation of Human Organs and Tissues Rules of 2014. The regulations clearly outline the responsibilities of medical professionals in relation to organ donation. It provides a description of the composition and function of the Authorisation Committee, which is responsible for determining whether to allow or disallow the transplant. The Rules also specify the Protocol for Obtaining Authorization Committee Approval in

³⁸ Steffy Thevar, Generally 4 of 5 Living Organ Donors in India Are Women, and 4 of 5 Recipients Men: Study, Times of India, Nov. 13, 2023 (accessed May 26, 2024).

Transplantation Cases Involving Close Relatives, Non-Relative Donors, and Patients.

Organ donation is governed by the Transplantation of Human Organs and Tissues Act of India and its accompanying regulations, reflecting a commitment to ethical practices. Even though close relatives are allowed to donate organs, foreign recipients or those in short-lived marriages face more rigorous examination. Through this approach, transparency is upheld and the risk of exploitation is minimised. The Act explicitly prohibits commercial transactions involving organs in order to prioritise altruistic donation. Individuals who are vulnerable are therefore shielded from any unwarranted influence. With a keen focus on ethical principles, the Authorisation Committee diligently examines the scenario where an Indian national donates to a foreign recipient who is not a close relative. The document includes clear definitions of key terms such as "brain-stem death" and "near relative," ensuring consistent application of the guidelines. It fosters a sense of assurance in the process of organ donation and propels its ethical standards forward.

Both the Rules and the Act aim to prevent commercial transactions, as it has long been assumed by lawmakers that affluent organ recipients take advantage of economically and socially vulnerable organ donors. Thus, it is pertinent to analyse the categorization of donors according to existing

laws to demonstrate the varying rights of different donor types.³⁹

Defining Organ Donors:

Understanding the level of protection provided to organ donors requires us to recognise this unique group within the population. There are various transplant procedures available, such as autografts, allografts, xenografts, and domino transplants. Transplants are primarily feasible from two categories of donors: living donors and deceased donors. Donors who have passed away are individuals who have been declared brain-dead or have made cadaveric donations due to cardiovascular disease. Furthermore, there are two categories of living donors: living related donors and living non-related donors. According to THOTA, a "Donor" is described as an individual who is at least eighteen years old and willingly agrees to have their human organs or tissues, or both, removed for therapeutic purposes as outlined in subsections (1) or (2) of section three. It includes both living and deceased donors, with the condition that for deceased donors, authorization can be obtained from their family members or provided by the donor before their passing. It is worth mentioning that family members have the power to withdraw consent granted by a deceased individual before their passing for the extraction of their organs, tissues, or both. Individuals who are minors, or those under the age of eighteen, are not included in the definition of donor. In such cases, any parent

³⁹ Vijay Pothula, Sushruta and Indian Rhinoplasty, 30 ENT & Audiology News 1 (2021).

of the deceased may provide the necessary authorization. It is important to note that individuals under the age of eighteen are not eligible to be living donors. Additionally, even with parental consent, organs or tissues cannot be removed from a patient who has passed away due to cardiopulmonary reasons.⁴⁰

Infants born with anencephaly are an additional group of donors in paediatric organ transplantation. At birth, the absence of the forebrain, skull, and scalp is a characteristic that defines anencephaly, a disorder of the central nervous system. There is often the presence of primitive forebrain tissue, and a functional brainstem is commonly observed. Most anencephalic newborns do not survive for long without life-saving interventions.

In the late 1980s, the transplantation of a newborn heart from a Canadian anencephalic newborn to Loma Linda Medical Centre gained worldwide recognition for its potential in utilising anencephalic infant organs for transplantation. At Loma Linda University in 1989, a study was conducted on twelve anencephalic newborns who received a week of intensive medical support to determine the prognosis of brain death. None of the infants were able to successfully donate an organ. According to the study's authors, anencephalic newborns could not be utilised as organ donors due to the lack of legislative and medical reforms governing brain death and organ donation. Acquiring organs from an anencephalic neonate is crucial given their short lifespan, and any effort to

⁴⁰ W. Watson Cheyne, *Skin Grafting after Removal of the Mamma*, 138 *Lancet* 5–6 (1891).

extract them will unfortunately result in their demise. This goes against the law, which strictly prohibits the extraction of organs from minors who are still alive. On the other hand, newborns with anencephalia, a condition marked by the absence of a significant portion of the brain, will unfortunately not survive for more than a few weeks, if not mere hours.

III. Rights Of Organ Donors Under Indian Law:

Indian laws, such as the THOTA, offer a measure of safeguard for the rights of organ donors, whether they are alive or deceased. The Indian Constitution recognises the importance of preserving human dignity in life through Article 21, and also ensures protection against any form of exploitation through Article 23. Furthermore, it is evident that courts are going above and beyond the necessary procedures to ensure that donors and recipients of organs are provided with timely and appropriate care. The Punjab High Court has recently granted approval to transplant petitions filed by non-proximate relatives in the cases of *Ajay Mittal v. Union of India*. This decision reflects a thoughtful and intellectual approach to the matter. In the case of *Amar Singh Bhatia v. Sir Ganga Ram Hospital*, the Delhi High Court delivered a comprehensive judgement, outlining specific time frames of six to eight weeks for different stages of the organ and tissue transplant application process. These stages encompass application processing, document verification, completion, and interview scheduling. In the *Neha Devi v. Government of the National Capital Territory of Delhi* case,

the Delhi High Court thoroughly examined the correct interpretation of Rules 18 and 22 of the 2014 Transplantation of Human Organs and Tissues Rules. The investigation determined that the regulations and their provisions did not necessitate the need for spousal agreement. Obtaining voluntary consent from the donor is the sole requirement, and it must be verified by a third party, separate from the recipient. The Court found it difficult to interpret the Act due to the absence of a legislative requirement for spousal consent in organ donation. Therefore, it was determined that the stance of the respondents was inaccurate. The Court referenced *Common Cause v. Union of India* to underscore the significance of safeguarding the rights to life, physical autonomy, and privacy of individuals. Recognising the personal right of individuals, donating one's organs should not be contingent upon the consent of one's spouse. It is important to recognise that the spouse does not have the authority to impose their own preferences on the donor's personal decisions. Nevertheless, it is crucial for the donor to ensure that they provide and offer informed consent.

Alongside constitutional safeguards and legal intervention, the THOTA legislation in India is primarily focused on preventing the exploitation of vulnerable socioeconomically disadvantaged groups, while also ensuring the protection of organ donors' rights. Through a thorough analysis, the Act ensures that individuals have the freedom to make their own choices regarding organ donation. It is important to ensure that individuals are fully informed about the entire process, including all potential outcomes. Furthermore, motivated by empathy and concern, it has granted approval for the

exchange of organs among unrelated living donors. Various procedural safeguards have been implemented to ensure the prevention of any kind of commercial transactions. According to the Act, it is clearly stated that Indian donors are prohibited from transferring their organs to recipients outside of India, unless they are close relatives. It seems that measures have been taken to protect the donations from being exploited by individuals seeking personal gain. Engaging in any type of commercial transaction is strictly prohibited and can result in significant consequences. Even individuals who commit the offence may be subject to significant fines. The Act has put in place a thorough procedure concerning the accreditation of medical facilities. Furthermore, it enables the establishment of a registry and a nationwide network for organ and tissue donation.⁴¹

However, the organ transplantation process has always been vulnerable to exploitation because of the limited availability of transplantable organs and the growing demand. The unintended consequences of this discrepancy include illicit organ trafficking, medical tourism for organ transplantation, and international human trafficking for the purpose of harvesting organs. These issues highlight the complexity of the situation. Section 370 of the Indian Penal Code 1860 addresses the serious issue of human trafficking and the illegal trade of organs, reflecting a comprehensive grasp of the legal framework in place.

⁴¹ Paul Byrne & Edmonton, Alberta, Use of Anencephalic Newborns as Organ Donors, 10 *Paediatr. Child Health* 335, 335–37 (2005).

IV.Rights Of Organ Donors Under International Law:

The Guiding Principles on Human Cell, Tissue and Organ Transplantation (WHO Guiding Principle) have been internationally recognised by the World Health Organisation (WHO). These principles effectively regulate the ethical and medical aspects of tissue and organ transplantation. These principles are put into practice in India. It is clear from the objectives and rationales section of the Indian Transplantation of Human Organs and Tissues Amendment Act 2011 that the World Health Organization's guiding principles were carefully considered during the amendment process in 2011.

Upon careful examination, it becomes evident that the instrument acknowledges only a restricted range of rights concerning the protection of donors. It is worth mentioning that the requirement to obtain informed consent from donors is noticeably absent, which is a matter of great concern. Consent is the ethical cornerstone for all medical procedures. For the sake of avoiding any possible conflicts, it is crucial that the physician who helped with the care of the deceased donor or confirmed the potential donor's passing does not take part in the transplantation procedure.

Before beginning the transplant procedure, it is necessary to obtain informed and voluntary consent from a legally competent individual for a living donation. Donating living organisms is only allowed when the donor is under the careful supervision and professional care. Additionally, it is crucial to provide clear and concise information about any

potential dangers and risks involved. It is strictly prohibited to extract organs or tissue from individuals who are legally incapable, including minors, without prior consent.

No other forms of compensation are allowed, except for reimbursement of expenses related to donations, such as covering lost wages for living donors and medical expenses. This prohibition aims to ensure that individuals are not discouraged from donating by such compensation. It is considered appropriate to cover the reasonable expenses involved in obtaining human cell and tissue products and organs for transplantation, as long as the human body and its parts are not used for profit. There are certain concerns that arise when donors are provided with incentives for essential items like health insurance or medical treatment, which they might not have been able to afford otherwise. Ensuring the utmost quality of health is an essential right that should never be compromised, even when it comes to the exchange of body parts. Living donors are eligible for regular medical check-ups related to the donation, as well as insurance coverage for any complications or mortality resulting from the donation.⁴²

It is crucial for national health authorities to have oversight over transplant programmes, ensuring that both donors and recipients receive the necessary care. This includes providing them with comprehensive information about the transplantation team responsible for their treatment. To

⁴² Priyanka Vora, Health Insurance Firms Are Denying Us Coverage, Some Organ Donors Allege, *The Scroll*, Jan. 27, 2018 (accessed May 27, 2024).

achieve a delicate balance between the interests of donors and recipients, it is essential for the consent procedure to include a thorough evaluation of information regarding long-term risks and benefits. It is crucial to carefully consider the advantages and disadvantages of donation and transplantation for all parties involved.

This instrument promotes transparency by providing unrestricted access to comprehensive, regularly updated data on procedures, including allocation, transplant activities, and the impact on living donors and recipients. It also provides information on funding, budget, and organisation. Ensuring the safety of donors and recipients is of utmost importance. The system should focus on identifying and addressing potential risks, while also making data easily accessible for government oversight and academic research.⁴³

V. Are These Rights Sufficient? :

From a scholarly perspective, organ donors are protected from any form of financial exploitation and are inherently entitled to safeguards against human trafficking. The challenge, though, lies in its execution, not its purpose. Preventing the possibility of emotional coercion during a donation between close relatives is quite challenging in practice. Those who have a genetic connection are expected to contribute, as this responsibility is not seen as optional or voluntary, going against the World Health Organisation

⁴³ Dale L. Moore, Anencephalic Infants as Sources of Transplantable Organs, 30 *Jurimetrics* 189, 199–221 (1990).

Guiding Principles. Furthermore, there are reports indicating a significant gender disparity, with over 80% of living donors being female, typically wives or mothers, while the same percentage of recipients are male. Experts attribute this significant gender gap to economic and financial obligations, societal pressures, and long-standing preferences. Living donors outnumber cadaveric donors among men. Intellectuals often observe that the reluctance of men, who are often the primary earners, to undergo surgery, coupled with the societal expectation for women to be carers and providers in the family, are the main factors that motivate more women to donate. In such a multifaceted socio-cultural landscape, ensuring the fulfilment of voluntary and free consent poses a significant challenge.

Now, let's delve into the matter of transgressions and sanctions as outlined in the THOTA. It is worth mentioning that, according to the Act mentioned earlier, both the person who offers money or any other form of compensation for an organ and the person who receives it are considered to be in violation. Viewing patients or organ recipients as criminals is a clear disregard for the concept of fairness. Moreover, in the case of a living donor, they are unable to seek assistance if they develop a future ailment, as commercial transactions are strictly prohibited under Indian law. Participating in such transactions could potentially label them as wrongdoers. Although the Act includes provisions for fines and penalties, they are largely ineffective because the Appropriate Authority is required to apply for cognizance of the offences. In addition, the legislation fails to incorporate a crucial aspect outlined in the WHO Guiding Principles - the provision of a

sufficient infrastructure and follow-up mechanism for living donors in need of treatment.⁴⁴

In India, individuals who are considered living donors are not eligible for medical health coverage after their donation because they no longer have the organ or organ component. The current situation in India is worrisome as there is a significant shortage of transplants. It is crucial to provide potential donors with health insurance to ensure the smooth functioning of the entire process.

Most health insurance policies do not cover the costs of organ donation because the policyholder does not personally benefit from donating an organ to someone else. Indeed, organ donation poses the risk of subjecting a healthy individual to a complex surgical procedure. In addition, he may experience specific medical complications such as allergic reactions, thrombosis, and damage to nearby organs and tissues. Occasionally, donors may face psychological challenges in addition to complications related to the functionality of the remaining organ. Organ donors frequently face the challenges of anxiety and depression related to their mental well-being. These factors can lead to higher medical costs, which can put a strain on the insurance provider. Someone who donates out of compassion not only gives up a vital organ but also, if they haven't done so before, loses their eligibility for a suitable health insurance policy. India is in desperate need of donors, and many of those who contribute are able to maintain their normal, healthy lives

⁴⁴ David Hamilton, *A History of Organ Transplantation* 13–19 (Univ. of Pittsburgh Press 2012).

afterwards. Rejecting someone solely based on organ donation is not justified.⁴⁵

VI. Conclusion:

After thoroughly analysing the legal status of organ donors in India from various angles, it is clear that the legislation aims to safeguard them from exploitation and has put in place the necessary mechanisms to achieve this objective. One can observe how authorization committees handle cases where they reject organ donation applications from unrelated donors and recipients due to concerns about potential commercial transactions, often influenced by the donors' unfortunate economic background. On the other hand, when faced with an appeal against such an order in the High Court, the court made a ruling that goes against the goal of promoting the welfare of the recipients. The current situation is quite complex. Living donors, regardless of their relationship to the recipient, are not entitled to government protection or legal support if they choose to make a donation. Although related donors may have emotional investments in the recipient, their position is not completely enhanced. In addition, the family of a deceased donor faces moral and ethical dilemmas. The family is currently facing the difficult situation of dealing with the loss of a beloved member and now needs to be convinced to give their consent for the organ harvesting process. Moreover, it is unfortunate that the current legislative assumption is that all financial transactions must

⁴⁵ Dale L. Moore, Anencephalic Infants as Sources of Transplantable Organs, 30 *Jurimetrics* 189, 199–221 (1990).

be considered illegal and subject to punishment. Undoubtedly, the donors' concern stems from the fear of being seen in a negative light. They have to face a life filled with constant apprehension. Given the circumstances, it is crucial to establish and uphold policies that focus on protecting the well-being of the donors from potential health hazards, while also striving to enhance their overall quality of life.

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Are War Really “JUST”: Appraising the Principles of ‘War’ under International Humanitarian Laws

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1. Introduction

“A just war could be offensive and that injustice should not be tolerated so as to avoid war.”

--St. Thomas Aquinas, *Summa Theologica*.

Whenever the word ‘WAR’ is uttered; it suddenly takes away the minimum peace and stability in an individual's mind, body, and vicinity. Since time immemorial; specifically, since people might have understood abrogating the nomadic lives and searching for stability; the strive for power and proving one’s potential has been one of the central focal points. With time and developing social complexities, the advent of establishing a ‘power quotient’ and ‘claiming’ of varied sorts became the most common human behaviour. The word ‘WAR’ emanates from the old High German word, ‘*Werran*’ or the old English ‘*Werre*’, which meant ‘large-scale military conflict’. Even the Spanish, Greek, Portuguese, Italian, and other contemporary literatures have emphasized to use of such words in their dictionaries to address the processes that qualifies as war. Wars have been found with

utter importance amidst mankind and civilizations since immemorial. Walking through the lanes of global history from ancient to the recent past the only thing which can be realized is that, for a long time, wars were considered the only last option for the settlement of conflicts and frictions. Considering wars as an inevitable part and parcel of all times, justness has been an essential element to strike out. Justness which means moral and fair quality, and just war which means a war fought for and with fair treatment and right cause, is a very interesting facet of War. As the entire process of War encapsulates the ruthless or rather bare harsh human realities, finding justness in it or behind it becomes quite crucial. However, it would be incorrect to mention that justness at war, or rather, the idea of 'just war' is very nascent in its emergence and usage. The theory howsoever bibliopolical it is, is an outcome of a long-standing effort and serious orientation to regulate the outrageousness of war. The 'conscience element' at war and the endeavor to look for that conscience in the form of 'righteousness' or 'justness' has travelled through a long and testing pathway. The lenses through which the 'justness' at war and behind war has been looked into have changed over the period beyond any doubt. There are two layers of justness at war. Firstly, it is the cause for which a particular war has been designed and fought, and secondly, the humane ways of warfare and the justness of the combatants at war which has been observed in war zones. These two are quite different from each other and thus has been tried to be dealt with individually, devoid of each other since the days of traditional interpretation of both of them. The present paper is an endeavor to delve into the 'justness at

war'. Hence, is trying to question the just element while the forces are at war.

However, drawing a distinctive paradigm for both becomes an arduous task in itself. The righteous cause behind promulgating a war or a series of it had a huge impact on its execution pattern to the highest extent in the majority of cases. The ways that will be adopted by the war-waging authority use to take a course as per the objective for which it used to be waged. However, time and again establishing the thin delineation between justness from both ends became quite elusive. The globe has witnessed throughout the ages that, the rulers and potentates at war has been so casual and despotic at times which has led to achieve new heights of human struggle and enigma. From the days of Greek city-states to the modern-day wars between the nation-states, striking out 'justness' has been a task of trial and tribulations. Even despite modern-day elaborative international norms and domestic laws to address the issues related to institutionalizing and practicing 'justness at war'. The element has many minuscule elements to be looked into. Starting from the protection of civilians stuck at war and primarily affected by it to protecting the state property at war zones; also taking care of the reason and objective behind the war to honor the rights of combatants at war are just a few arenas which matter of concern to secure justness at war. Though the inception of the concept 'justness at war' started back in traditional days as a theoretical expectation that could be tried to regulate and scheme wars to be fought in a comparatively controlled environment, over time the attempts to actualize the theoretical realities have multiplied with an

impetus. In addition, the entire hegemony of international humanitarian laws is standing partially on the epitome of establishing the concept of ‘just war’ in modern times amidst the developed format of conflicts among nation-states. Having said that, there still lies a plethora of grey areas where this element of justness at war is completely foreign. Not only it doesn’t exist at all when the forces are counter-striking each other, but there lies no intention to establish a just element at all in terms of mitigating the wars. Especially with the ongoing incidents of the Ukraine-Russia war and the Israil-Palestine war, the world has hardly witnessed any attempt to either address the situation with any justness or even try to restore it to end the apathy. Hence, the question still stands audaciously questioning the practicality of attempts already made and tried to be implemented to regulate wars and to inculcate justness in them.

This chapter is an attempt to unearth the ever-existing reality of wars in the developmental process of mankind and civilization all across the globe over the ages. The part has thus been dedicated to describing the wide presence of wars and their historical trajectory over the times in all corners of the globe. The second part is dedicated to addressing the development of the ‘just’ theory of war from the days of its inception to its modern-day presence of it in the international and regional global instruments. The third part of the chapter has taken some instance in hand to elaborate the endeavors taken by and large in the war fields to establish justness in practical sense and how far they have been gone successful or not. Finally, the fourth section is the suggestive and concluding part where how the existing attempts can be

addressed more meticulously or how far the ongoing wars are sticking to the just postulates.

1. Initial anecdote on Wars across the globe

As mentioned earlier, with the inception of mankind in its gregarious form, the conflict for prowess and over-powering each other became quite evident. The more power and claim one has; the more potential he/she is considered emphatically. This striving for power among the early hegemonies turned out to be some of the most initial and rudimentary wars which gave birth to the ‘war philosophy’ of the world. It is rather documented that people have involved themselves in organized warfare since the Neolithic Age. A 2016 survey has fairly concluded that “a massacre took place some 10,000 years ago near Lake Turkana in Kenya, with the victims showing signs of bound hands, arrow wounds, and fractured skulls”. However, the more complex fights were targeted against a greater section of the human population around 3000-2500 BC. The Mesopotamian and early African civilizations around 3300 BC have showcased many wars fought with the help of organized armies with formal leaders and distinctive hierarchical methodologies. Similarly, the Egyptian dynasties, the Chinese dynasties (Warring States period, the Han dynasty), Rome’s imperial war of conquest, the agonistic struggles of Greek city-states, and the French monarchies of those times were also setting the stage for complex and multifaceted warfare. As per the Prussian war analyst; Carl Von Clausewitz;

“War is waged by political entities, nations or, earlier, city-states to resolve political or territorial disputes and are carried out on the battlefield by armies comprised of soldiers of the contending nations or by mercenaries paid by a government to wage battle.”

The Indian Hindu literature also has emanated several pieces of evidence which speak highly about war and its related aspects. In Kautilya’s Arthashastra, the mention of the term “*apakarovigraha*” has been translated later as, “offensive operations of war”. Also in Amarakosa, it is said that;

“viruddhamgrahanamsvasthanatparamandaladahavilodivigraha”

This verse in Sanskrit meant that, to promulgate a war, there lies two essentials; firstly, there must be some operations that are creating hostility or contest; and, secondly, there must be an intent to carry on such operations. It is well known that the old testaments of Indian origin made elaborative submissions on war and peace. Be it Mahabharata or Ramayana, or even Yajurveda, all have described Wars as a central point of importance in the human civilization of those times. The entire backdrop of Mahabharata is nothing a ‘Dhrama Yuddha’, where ‘Dharma’ has been interpreted as ‘righteousness’ and ‘Yuddha’ as ‘warfare’. Some schools were based on the belief that Wars were the ultimate solution of settlement in human conflict and thus Kautilya had even classified wars into four main divisions namely; Mantrayuddha, i.e. war by counsel employed by a weaker king when waging an open war is not a good idea, Prakasayuddha, i.e. open war, Kutayuddha, i.e. a concealed

war that meant irregular warfare and psychological warfare, including the instigation of treachery in the enemy camp and Gudayuddha, i.e. using covert methods to achieve the objective without waging a battle.

Hence, it becomes quite normative to say that wars are as old as the schematic governments are in operation at a global level. However, with time wars became more and more multifaceted, which means they were waged at varied times keeping in mind the variety of reasons within the varied format of States; ranging from, city-states to dynasties, Islamic states to Church-run States, or even colonies to the occupied territories. Wars became universalized much before there were officially universal literature on it to regulate and simulate it in the way we demand today. They were very much pin-pointed and were designed to achieve the desired ‘just’ cause for which the concerned war might have been staged.



Figure 1: Early cave inscription of war (Destruction of SUSa)

With the advancement of mankind, wars played a central pivotal role in improvising and directing works of literature and linguistic developments accordingly. The inception of

concepts like; dividing the army into hierarchical divisions; making the army categorized into artillery and infantry; launching guerrilla warfare, use of underground bunkers and waterways, introducing cavalry units, and training armies in perpetuity to create a class distinction of military in the society; manufacturing warships; war weapons are all very glaring pieces of evidence that; wars were known to every individual including his/her respective inclusiveness in it, whether voluntarily or involuntarily. During the period of the Renaissance, the Wars of Religion, the 1494 invasion of Italy, the bellicose politics of princes and popes (especially during the times of Alexander VI and Julius II between 1492 and 1513), made significant additions to the war culture of the globe. There is a sheer dearth of literature that showcases the war realities of the time in comparison to later times. The other parts of the world were also not devoid of this war culture. Ranging from the medieval period Indian invasions by foreign forces and occupying the territory using Warfare as the main means to the African kingdoms of Senegal and Kayos' challenge to the sovereign presence of the dynastical presence through declaring War and even the aboriginal Australian Islanders and their wars, the complexities and their intertwined effects have been on the increase with time and period. With the increased complexities one of the major red-flag consequences is the casualties at war. Even though the protection of civilians and combatants has been given a lot of impetus in humanitarian law regimes, the rates will bring light only anguish and surprise. The incumbent reference here would be incomplete without the mention of the 19th Century Napoleonic War, the American Civil War, the Taiping rebellion in Asia, the Zulu wars in Africa, the Circassian

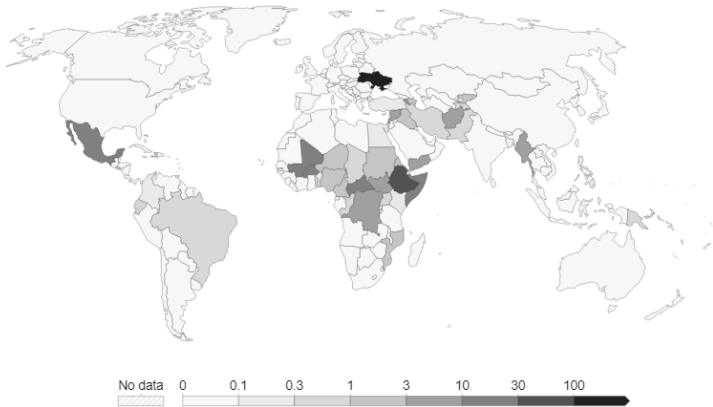
Genocide, and the Australian Oceanic wars. These have changed the face value and extremities of war to a great extent. But the unprecedented episodes of the 20th Century in the name of two World Wars have created such unparalleled standards in all ways in the history of warfare. “Shell Shock” is a phrase that has been introduced by the soldiers of those times to describe the post-war traumatic stress disorders among the soldiers. By the end of World War II, much of Europe and Asia, and parts of Africa, lay in ruins. Combat and bombing had flattened cities and towns, destroyed bridges and railroads, and scorched the countryside. The war had also taken a staggering toll on both military and civilian lives. Shortages of food, fuel, and all kinds of consumer products persisted and, in many cases, worsened after peace was declared. War-ravaged Europe and Japan could not produce enough goods for their people, much less for export. Even after the world witnessed the most traumatic attack in the form of the Hiroshima-Nagasaki nuclear attack in World War II and thought that war was to be condemned at all levels with all means, the war culture kept continuing. Wars in connection to the Cold War viz; Korean Conflicts or the Vietnam War proved devastating for the combatants and civilians in no less intent. Another interesting fact was that now the powerful States of the globe; primarily the West, were much interested in being called ‘nuclear powers’. Much like the history, the inclination was still to assume the central focus of power through weaponry. Careless about the factsheet of death and devastation, the countries almost kept, ‘justness’ devoid of ‘war’ during this era. Many international law advocates thought that the 21st Century will now witness only the post-conflict phase of peace and inclusiveness; the

world got enveloped in challenges like; ethnic conflicts, multilateral political scuffle, terrorism, civil wars, and bulk of inter-state, intra-state, and non-state conflicts. Syrian Civil War, the Israel-Palestine ongoing War, the Iraq War, the Darfur Conflict, the War in Afghanistan, The War Against Boko Haram, the Indian-Cino Wars, the Russia-Ukraine War, the Iran-Iraq Conflict, the Baluchistan issue, the Tamil-Sri Lankan civil strife, the Yemeni Civil War and many other unending lists of Wars and civil strives had blatantly questioned the validation of justness at war and its visibility.

Since 1800, more than 37 million people worldwide have died while actively fighting in wars. The number would be much higher still if it also considered the civilians who died due to the fighting, the increased number of deaths from hunger and disease resulting from these conflicts, and the deaths in smaller conflicts that are not considered wars. To no wonder, this death rate has been officially taken down and will not be reflecting the bare realities. However, even so, the known rates are not to be overlooked. Below is a pictorial presentation of the global presence of death rate during armed conflicts until 2022 (approximately). It showcases that, no part of the world has been left devoid of this phenomenon ever, and on the contrary, the time has travelled and witnessed wars in its most savage forms with time.

Death rate in armed conflicts based on where they occurred, 2022 Our World in Data

Deaths of combatants and civilians due to fighting, per 100,000 people. Included are armed conflicts that were ongoing that year.



Data source: Uppsala Conflict Data Program (2023); Natural Earth (2022); Population based on various sources (2023)
OurWorldInData.org/war-and-peace | CC BY

Figure 2: Death Rate in armed conflict across the globe until 2022

Deadliest Wars in Europe Since WW2 (As of 2022)

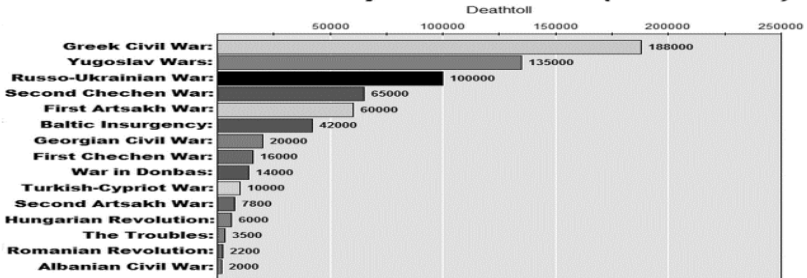


Figure 3: Some notable Wars Since World War II

If a death toll is taken into consideration, it would be realized that with varied wars the range of casualties and the death toll has varied too. Below are some notable wars across the ages

in the globe and their death toll for both civilians and combatants.

Some major Wars Across the Globe	Death Toll (both combatants and civilians)
Napoleonic Wars	57,000-59,800
Venezuelan War of Independence	60,000- 80,000
Crimean War	1,42,000- 1,72,000
American Civil War	1,66,000-2,22,000
World War-I	7.9 million-8.9 million
World War-II	21 million-30.8 million
Chinese Civil War	1.2- 2 million
Vietnam War	1-1.2 million
Iran-Iraq War	2,89,000- 5,78,000
Russia-Ukraine War (Ongoing)	3,29,000-4,68,000 (till 1 st May, 2024)
Israel-Palestine War (Ongoing)	48,000-50,000 (till 19 th June 2024)

Table 1: Some major wars across the globe and their death toll

The above tabulation is a heart-wrenching human reality showcasing the tremors of death each of these wars have inflicted on mankind. Also, many such have not been mentioned here, which have created an immortal vacuum amongst the human presence questioning the validity of ‘justness at war’.

2. Evaluating the ‘Just War’ Theory

3.1 The Initial Efforts

Just war theory deals with the justification of how and why wars are fought. Firstly, as said earlier, it deals with the main reason behind promulgating a war and the fairness implemented while at war. Although the ‘Just War’ Doctrine was popularised only after the Hague Laws and Geneva Laws in the International Humanitarian Law regime which established them as the universal principle to be followed, the inception of it was much before that. The classic Just-War Theory has its origins in Christian theology. Saint Augustine is generally acknowledged as the first thinker to offer a theory on ‘war and justice’. He referred to them as the basic standards for a war to be designed and fought. The Saint referred to the Holy Bible and regarded that some wars are necessary and so inevitable to amend evil. However, while evicting an evil an innocent must not be hurt. He emphasized that wars must follow as much as possible the principle of righteousness and must be fought on some virtues. Saint Thomas Aquinas revised Saint Augustine’s version, creating three criteria for a ‘just war’:

- a) the war needed to be waged by a legitimate authority, have a just cause and have the right intentions.
- b) The moral justifications for a war are expressed in *jus ad bellum*; whereas,
- c) the moral conduct of the war is expressed in *jus in bello*.

These principles of; '*jus in bello*' and '*jus ad bellum*' later took center stage for the International Humanitarian Laws to get developed in the way they are prevailing in the present context. Although St. Augustine has been largely considered to be the one who propagated the 'Just War Theory' among the theological societies at large, it has been manifested in many works that, Cicero is to be considered as the founding father of this theory. Marcus Tullius Cicero was a Roman statesman, orator, lawyer, and philosopher, and through his close engagement with Natural Law theory and his socio-political environments, he framed outstanding analyses of war and formulated phenomenal theories within the context of the Great Roman Empire, the reigning super-power of his times. Being an ardent supporter of absolute morality and a Platonist, Cicero fiercely advocated that wars if are being fought to elevate the condition of the commons and to establish a moral virtue at the end of such war, the timely sufferings of the commons and the non-orderliness for time being may be allowed by a State. However, while advocating wars to upheld morality he never kept the war zone free of any regulations. He always believed strongly that nothing at war must compromise the rights of a common man with no weapon at hand. Cicero's war ethics were founded upon his Natural Law theory which attributed these laws to God and therefore carried plenipotentiary gravitas. As such, Cicero believed that we have the obligation and the responsibility, not only to ourselves and our loved ones, but to those who are victims of injustice, as well.

Augustine's intervention in the theory inculcated the element of spirituality and supremacy of peace. He emphasized the

restoration of peace as the main motive behind war and opined that,

“A just war is won't to be described as one that avenges wrongs, when a nation or state has to be punished, for refusing to make amends for the wrongs inflicted by its subjects or to restore what it has seized unjustly.”

Hence, for him, a just war is always for resorting to peace and harmony and must be always limited by its purpose, its authority, and its conduct. Thus the pronouncement and propagation of the initial concept of ‘Just War’ were chiefly based on; reinforcing morality and restoring peace. Justness must be adhered to at war in whatever ways possible to bring morality and peace to its desired place. He also penned down certain basic postulates to adhere to ‘justness’ at war. The principles have been declared by him as; ‘The Principle of ‘Just-War’ Theory. They are; Last Resort, Legitimate Authority, Just Cause, Probability of Success, Right Intention, Proportionality, and Civilian Casualties.

Last Resort- A just war must only be waged after all other peaceful options are considered. The use of force can only be used as a last resort.

Legitimate Authority- A just war must be waged only by a legitimate authority. A war cannot be waged by individuals or groups that do not constitute a legitimate government.

Just Cause- A just war needs to be in response to a wrong suffered at large by the common subjects of a State. Self-defence against an attack always constitutes a just war; however, the war needs to be fought to correct the unjustness.

Probability of success- For a war to be just, there must be a rational possibility of success. A nation cannot enter into a war with a hopeless cause. There must be a desired and targeted end.

Right Intention- The primary objective of a just war is to re-establish peace. In particular, the peace after the war should exceed the peace that would have succeeded without the use of force.

Proportionality- The violence in a just war must be proportional to the casualties suffered. The nations involved in the war must avoid disproportionate military action and only use the amount of force absolutely necessary.

Civilian Casualties- The use of force must distinguish between the militia and civilians. Innocent citizens must never be the target of war; soldiers should always avoid killing civilians. The deaths of civilians are only justified when they are unavoidable victims of a military attack on a strategic target.

St. Augustine believed that, using these principles, justness at war can be attained. He strongly advocated for the then

existing States to be followed to establish them as customary practices of war.

2.2 The Intermittent Initiatives

As the wars never stopped so are the efforts to address the war with some expected standards of justness never ended. The aspirations to bring righteousness in war existed forever. Another church father whose just war theory combined scriptural authority with judicious deliberation was Thomas Aquinas. *Summa Theologiae*, Aquinas' treatises on 'matters of spirituality, politics, and law' contained some of his brilliantly articulated opinions.

In ST II- II, Q. 40, A. 1,

“Thomas asserts that waging can be justified if three conditions are satisfied: (1) that legitimate authority decides to wage war; (2) that there is a just cause to wage war; (3) that those waging war have a right intention, namely, to wage only for the sake of justice.”

Virtually all accounts of just war, from the Middle Ages to today, refer to these threefold manifestations upheld by him. But owing in large measure to its succinctness, Aquinas's theory has prompted contrasting interpretations. He emphasized too much on the rightful authority and that is why firmly believed that only the sovereign can do so to protect its citizenry from the misfortune and apathies which might be tormenting them. Aquinas supported the views of Cicero in highlighting the natural law element to be found in just wars. He emphasized that God has supreme authority to

create this world and its worldliness, hence whenever a war is waged, it must uphold the supremacy of Natural law principles. In no circumstance, should it compromise or eclipse the rightful cause for which war has been sought after. Also, the people who are involved at the war must be taken care off by the war-waging forces. Even the common men of the leader or warrior who has lost his position at war must be taken care of in Victor's place with utmost sincerity.

During the Middle Ages while at one end the Just War Theory was becoming more developed, and Crusades were being supported by Church leaders, on the other hand, peace movements among Christians flourished as well. A peace movement known as the "Great Alleluia" involving thousands of people took place in northern Italy in the 13th century. In 1233 the movement had grown to such proportions that 400,000 people gathered to demonstrate peace and reconciliation. These protests helped to bring an end to the Crusades. Another Italian peace movement known as the "Bianchi" moved about in thousands from one city to another. Peace-making was their major work. One chronicler noted that by the time one of these processions reached Rome its numbers had swelled to 200,000.

But despite all such efforts to divert the movements to practice and flourish peace and no war, the principles of, '*jus in bello*' and '*jus ad bellum*' were gaining popularity in different parts of the world. For instance, the Chinese concept of 'yibing' focused on what the West would term *us ad bellum* (justice to wage war), and also had little to say about *jus in bello* (justice in war) norms. Even the Indian practices

the kings were used to get trained in the art of artillery and infantry. The art of arranging 'chakravyuha' and the ways swords and bows-arrow have to be used were part of those pieces of training. There were too much of emphasis on the moral quotient at war in the name of 'dharma-yudhha' as discussed in the previous part. The justness at war has also been addressed by Plato and Aristotle. Plato created an ethical distinction between war proper, which is natural and unlimited, and war as 'faction', which is unnatural and in which destructive actions should be restrained. Aristotle followed Plato in stating that intra-Hellenic warfare was a disease, while the wars fought against barbarians were natural and therefore legitimate and virtuous. But neither Plato nor Aristotle applied an egalitarian concept of justice to war; quite the opposite, their ethical analysis of war was deeply partisan, based principally on the disparity between Greeks and non-Greeks.

During this period not only the 'justness of war' was taken into consideration but the 'justness at war' was also found important. The three requisite conditions of justness at war were based upon three assumptions: firstly, the right to defend oneself and repel force with force (*vim vi repellere*); secondly, a material right to recover lost property (*rebus repetitis*); and thirdly, a punitive right to avenge injuries and punish wrongdoers (*iniuriae ulciscuntur*). These were getting propagated like forest fires and thus coagulating the principles which later helped in the development of International Humanitarian Laws. The most important of those writers who emphasised the concept during these times were: Francisco de Vitoria (1486-1546), Francisco Suarez

(1548-1617), Hugo Grotius (1583-1645), Samuel Pufendorf (1632-1704), Christian Wolff (1679-1754), and Emerich de Vattel (1714-1767).

2.3 Just War During 19th and 20th Century

With the advancement of time and age, the contextual of war remained as it is but got wrapped into more complex realities of the time. The modern warfare schemes, the outlook towards handling the war, and justifying its necessity started to be tackled with a wider ambit than before. A war was getting justified if it was waged to help a defenseless nation against any external aggression to either fortify its borders or reclaim what had been stolen, or even to reinstate law and order. As per Micheal Walzer, this era witnessed the bifurcation of theory of just war in its traditionalist and revisionist views. Wherein the traditional approach was only limited to the philosophical views of morality and righteousness at or behind a War, the revisionists questioned the naturally widening scope of Wars. They targeted some aspects like; the permissibility of national defense while intervening in the States' morality, the moral standing of States, expanded permissions for military interventions, civilian immunity, and combatants fighting for wrongful aims who cannot do anything right presumably, besides lay down their weapons. In his famous work 'Just and Unjust War' in 1977 (1st Edition) while describing this era he mentioned that the justness of war during this time was somewhere stuck between, 'necessity and slaughter'; 'mercy and massacre'; 'ruthlessness and virtues'; 'expansion and exoneration'. He

unearthed the views of that time which used to believe that, why the wars are so unacceptable and must be taken as a last resort? The answer lies in the fact that, finding justness at war in itself becomes very utopian as ‘morality’ and ‘brutality’ will be present at the same time with equal impetus is quite elusive. The endeavour however is not to be discouraged at all. The doctrine of just war might have travelled these paths of harsh criticism and immense obstacles have nevertheless attracted much attention of this era as well. Rather the initial cornerstones establishing the foundation of international humanitarian laws were laid down much during this era itself.

The year of 1862 marked the beginning of a literary birth of framing legal orders for conflict law. The then US President Abraham Lincoln asked one celebrated Columbia University Professor, Francis Lieber to formulate rules of conduct in war used by the Union Army during the American Civil War. This code got famously known as Lieber Code and promulgated as General Order No. 100 by President Lincoln in 1863. Though not a treaty the Code was a strong reflection of the then customs and observations at war during those times and hence influenced the further codification of laws of war and including ample scope of jus principles in the later codified laws of armed conflict. Through its 157 Articles which got drafted with meticulous research, the author emphasised on multiple aspects of justness. Protection of prisoners of war; protection of public property, the works of arts and sciences; non-discrimination among combatants based on their social, ethnic, or economic origins; distinguishing between combatants and non-combatants; protection of civilians especially women, children, and

destitute made an essential part of the Code .Concepts like military necessity, hors de combat, and non-enslavement were some of the path-breaking literary realities that took their shape through the Code for the first time in the codified form. The Martens' Clause was another revolutionary piece in this direction which followed the path of The Lieber Code in recognizing the existing principles emphasized by the forces at war or by the sovereign of those times. This exceptional piece of work by the Russian delegate Professor von Martens at the Hague Peace Conference in 1899 made its unforgettable mark in the history of codified laws on armed conflict by making its place in the Preamble of The Hague Convention II of 1899.Even much later in the Advisory Opinion of the International Court of Justice (ICJ) on the legality of the threat or use of nuclear weapons issued on 8 July 1996, an extensive reference was made to the Martens' Clause for its contemporariness towards international armed conflict laws and sincerity towards addressing the laws or armed conflict with a balanced approach of rationality and humanness. It holds an important position in upholding the justness at war as the Clause has emphasized highly on the 'dictates of public conscience and 'laws of humanity' The principle of humanity can be interpreted as the inclusion of such prohibition clauses which are unnecessary and not required for the attainment of a specific military cause. Also, the era made a mark in the creation of modern humanitarian laws by holding the hands of a Genevan person Henry Dunant, who has later been considered as the father of modern international humanitarian laws. The battle of Solferino fought between French, Italian, and Austrian forces made his emergence as one of the survivors on the battlefield.

In 1862, in his book, *A Memory of Solferino*, he evoked the sufferings and apathy faced by him and his countrymen at war. It was his brainchild to give rise to one of the greatest International Organisations in the field of humanitarian laws to date in the name of ICRC (International Committee of Red Cross) more popularly known as The Red Cross. He was an ardent supporter of waging war through absolute justness. However, he also acknowledged that as wars are inevitable the protection of innocents at war must also be upheld without any exception. The concept of neutrality, military nursing facilities, combatant hospitals, protection of the wounded army, and distinguishing civilian objects from military objects, were some of the extraordinary thought processes that he channelized with utmost diligence.

The 20th Century resonated with an era that shook the world from within its core. The most developed format of schematic wars, their restructured means and methods of warfare, and the use of developed weapons, and armoury were all tried and tested during this era. The evolution of nuclear warfare and the two World Wars posed serious questions on the basic conditionalities laid down by the existing laws enforcing the just war concept as a fundamental tenet to be followed. Indiscriminate use of force, biological weapons, gas chambers for exoneration, human bombs, asphyxiation, etc all posed some underpinning questions to the veracity of rightful cause, rightful authority, and rightful *modus operandi* of war to be called a just war. Nikolaos Tzenios, while analysing the horrors of World War II and its nexus with just war argued that; wherein a just war doctrine has a specific prescription for making a war fair and just, whether World

War II had a justifiable cause or not, is a matter with mixed views. For some, it is a war for revolution, defence, and economic gains while for others it is for revenge, displacement, and territorial gain. So, for one set, it was just and for others, it wasn't. However, the degree of justness behind the World Wars and the justness at war stand in contrast with each other. The holocaust of these Wars speaks of the dark past in itself. The incomparable and irreparable human damages established the fact that howsoever justness would be there behind promulgating a war, it must be carried on further till the war zones. Neither they should only exist as mere rhetorical theories nor they must be kept as illusive realities for political, social, or economic benefits. The basic attributes of a just war namely; right cause, right intention, right necessity, right expectation, and right approach is needed to be upheld at a practical level. Wars must be treated as only and only last resort. Jean Bethke Elshtain, a famous American political philosopher, who has been speaking actively about the war against terror, stated that, "the reemergence of the doctrine and theory of the just war or justifiable war" is "an important story of our epoch" in the contemporary world. The mankind thought that terms like; "just cause" "competent authority" "last resort" "right intent" and "discrimination" are of utmost importance to be implemented through national and international means to protect humanity at large. The new face of just war must be to prohibit the unlawful violation of international peace, violations of the life and human rights of victim nations, and oppression of people rather than the interest of each state. To save the oppressed people from the aggressor or tyrant, and to

conduct war to punish the assailant must be the only objective to resort to war.

The post-World War I era witnessed a concerted effort by some countries to reestablish peace and counter war as a primary measure for dispute settlement. The 1919 Paris Peace Conference and the series of pacts signed amongst many protagonist countries namely; The Treaty of Versailles, the Kellogg-Briand Treaty among others are considered as celebratory peace pacts of the time. For them, the text of the treaties endeavored to declare Wars as the last resort for dispute settlement and to renounce Wars from their respective national policies. The main effort was to constitute a one-of-a-kind international organization that would not be subjected and answerable to a single sovereign whose primary objective was to establish peace and concord across the globe. The League of Nations was thus created in 1919 and was a forerunner 'to promote international co-operation and to achieve international peace and security by the acceptance of obligations not to resort to war'. The organisation tried to establish a well-organized system of redressal mechanisms and suggested many other ways of dispute settlement rather than resorting to War or conflict in the first wake. It has also mandated that in case of war, to ensure the presence of righteousness and morality, the combatants must be treated with a humane approach as much as possible, it discussed the prisoners of war and their human rights, it advocated lowering the armaments at the national level and to keep them only consistent to the national security policies, not to resort to war against any member-state as

some key features to maintain the just war approach during that period.

However, despite those efforts due to some inherent political and economic precursors, the Second World War couldn't be stopped. In contrast, what the world witnessed was the entry of some means and methods at warfare that were never seen before. The use of Sten machine guns, cluster bombs, undetectable fragments, blinding lasers, booby traps, smoke shells and flamethrowers, anti-personnel mines, chemical gases, biological weapons, and the most tormenting nuclear weapons, made all arrangements to evaporate justness at war for the time. The International Military Tribunal (IMT) in Nuremberg and the International Military Tribunal for the Far East (IMTFE) in Tokyo popularly known as; the Nuremberg Trial and Tokyo Trial respectively in 1945 and 1946 tried to re-establish the trust of the commons on virtues of justness even after wars have gone through so much of injustice and aggravated injuries. The establishment of the United Nations in 1945 after the Second World War condemned any such international or national armed conflict that would be prejudicial and opted as an unnecessary means to satisfy the alter-ego of the States.

The UN Charter in its preamble has shown concern by mentioning the tremors of war as the 'scourge of war' to regulate it with utter deterrence. Article 51 of the UN Charter has tried to put the elements of 'self-defense' and individual rights as the most important facet to remember for resenting Wars. Although, the same charter in Article 39 empowers the Security Council to take rightful measures in situations that

are threats to peace and may be considered by them as acts of aggression; the charter may be considered by and large a measure to address the just causes of war and advocate only the permissible means of warfare. The UN peacekeeping mechanism has been one of the most important means in the post-World War era to adhere to justice in war, at war, and behind war, if that is at all possible to be established. Also, one important thing that has to be kept in mind is the changing dimension of statehood during this period. Wherein on the one hand the international borders of many existing states were getting revised many others were coming in the context in light of decolonisation. The nature of conflict and the ways they were interpreted were getting diversified immensely. In light of such an environment, the possibility of maintaining the traditional belief of just war was probably becoming a tough task. During this time responsibility of states as a primary subject of international law was also given huge importance. Hence the principle of treating each sovereign entity as equal and laying heavy emphasis on the non-intervention of one state in the sovereign function of the other. United Nations Truce Supervision Organization (UNTSO), set up in 1945 is one of the signifying peacekeeping operations led by the UN to monitor an Armistice Agreement between Israel and its Arab neighbours and since then, more than one million women and men from 125 countries have served in 71 UN peacekeeping missions around the world.

The principle of R2P (responsibility to protect) came to light during this time. Just War philosophy was central to the R2P (responsibility to protect) doctrine. R2P campaigner David

Evans, responding to critics of R2P in light of the developments in Libya and Syria, clarified the R2P framework by stressing five “stringent prudential criteria” that should precede the decision to intervene militarily: Seriousness of harm feared; genuine intent to address that harm; nothing less than military coercion likely to succeed; force application proportional to the harm feared; and overall balance has been kept in concern. The ethics of war were now got more entangled with the individualized approach of the nation-states.

3. Questioning the Justness at War in the 21st Century

On 20 September 2002, the George W. Bush administration released a document containing a new national security strategy for the US. In this document, it is declared that the US maintains “the option of pre-emptive actions to counter a sufficient threat to our national security,” that “we will not hesitate to act alone, if necessary,” but that this option will be exercised only when “the cause [is] just.” This era can be chiefly characterized as an era of preventive military actions, installing peace-keeping operations, the era wherein international organizations are parentally given a moral responsibility to ensure that vulnerable peoples are protected and that genocide never occurs again, the era wherein new ranges of unprecedented weapons are installed at war, an era where diplomatic meetings and alternative dispute resolution mechanisms are looked upon highly to avoid war. The changed dynamics of states in terms of their international relations, the constant shift of power equations amongst the states, and their respective approaches to wars to which they

are made parties irrespective of their voluntariness or involuntariness have affected the outlook to interpret and understand just war in light of present times. Though wars have been a never-ending phenomenon, the format of wars, the objectives, the ways they are fought, and the after-effects of it matter a lot in dealing with justness concerning war during this period. From just addressing the ‘just war’ (*justum bellum*) as a traditional hegemony; distinguishing between the rules that govern the justification of war (*jus ad bellum*) from those that govern just and fair conduct during war (*jus in bello*) and even the responsibility and accountability of warring parties after the war concludes (*jus post bellum*) became more and more vital these days. Analyzing the presence of justness at varied levels becomes an utmost necessity.

4.1 Justness during Preventive Military Actions

Since the days of the Second World War, the world stringently condemned war as a primary for any State to undergo without any justifiable threat or not as a defensive tool. The Un Charter also made provisions for such means to be adopted only when there lies sheer threat to the peace by the act of aggression. Hence indulgence in a war was suggested to be taken only as a means of deterrence and not overpowering any independent sovereign authority. However, this era witnessed a large growth of non-sovereign, non-state but organized actors in the shape of terrorist groups. These groups often don’t operate using traditional military and/or political ways. Their approach towards their target are much more unorganised and hence goes beyond the spectrum of

formalistic deterrence policies. These upsurges are often to be solved only by 'preventive military actions' even in certain cases by piercing the sovereign entity of a State. For example, the phase-wise intervention of the US army (2003-2011) along with other allies in Iraq was chiefly a self-defensive measure; or the intervention in Afghanistan in the name of covert operations owing to the infamous '9/11' attack or even before it by the UN resolution UN Security Council adopts Resolution 1267, creating the so-called al-Qaeda and Taliban Sanctions Committee, which links the two groups as terrorist entities and imposes sanctions on their funding, travel, and arms shipments. There are many more to count which have been dictated by the collaborative efforts of many countries of the European Union and outside it which has tarnished the expected justness to quite a deep level.

Inculcating the ethics of war to these preventive measures has been a concern for society at large. Confirming the basic postulates namely; the rightful cause for a war to be declared, the notion of proper authority to wage a war when many non-state actors are now getting acceptance and recognition as organized forces, possession of a rightful intention behind waging a war, and analyzing its far-reaching consequences, and finally reaching up to a desired end are facing too much of arduous challenges. Also, the profound principles of international humanitarian laws like; prohibiting indiscriminate use of force, and superfluous injury, focusing primarily on military necessity needed to be reevaluated in light of the present era. Implicating the theory of deterrence by deploying peacekeeping operations in almost all corners of the globe posed a good amount of responsibility on the

operational executors to ascertain justness while doing so. There are plenty of reports where the adoption of abusive methodologies on the civilians that have come forward has shown sheer violation of the objective for which they have deployed. The 2016 report of Human Rights Watch reported that, documented eight cases of sexual exploitation and abuse by UN peacekeepers in the Central African Republic, including rape and gang rape. The lack of a coordinated UN response led to a failure to uphold international standards for interviewing and protecting survivors and referring them to needed services. In 2015, the UN began publishing the nationalities of soldiers alleged to have sexually exploited and abused women and girls. It also established a trust fund and programs for psychological care, job training, and other services for victims, including children fathered by peacekeepers. For decades, desperate civilians have sought UN peacekeepers to alleviate some of the worst horrors of the times, survivors of violence, displacement, and poverty shouldn't have to fear that those charged with protecting them will contribute to their suffering.

Peacekeeping has become a central point to Russia's policy to pursue continued interest in the "near abroad"- former Soviet republics. However, Russian uses of the term "peacekeeping" have drawn utter criticism. For example, Russia conducted military operations in Georgia and Moldova in the 1990s which were described as peacekeeping operations, and peacekeeping has also been considered the central objective of the conflict in the Donbas region of Ukraine, following the annexation of Crimea in 2014. The world is now well aware about the bare realities of many of

these ‘peacekeeping operations’ and the extent of peace they have been successful in attaining.

4.2 Justness in controlling means and methods of warfare

Another broad facet of enforcing justness at war is to ensure ‘proportionality’, ‘military necessity’, and ‘avoidance of superfluous injury’ while at war. In this light international humanitarian laws have taken some very stringent steps and tried to undaunted efforts to ban many such weapons and methods of warfare that have been used in wars and are unjust for the continuance of mankind. While the branch of maintaining means and methods of warfare is regulated differently from that of ‘just war’ *per se*; they are quite interrelated and required to be addressed in a consolidated manner to attain the desired justness. There has been a concerted effort to enlist many means and methods of warfare in post-World War times to save mankind from irreparable damages. WMD, or Weapons of Mass Destruction are such classifications of weapons which has been considered to be pre-judicial to exist and used as means of warfare since last century. The world at many forums including the leading international organizations has condemned the use of certain annihilating weapons that are capable of creating colossal amounts of devastation and suffering amongst the masses. The use of chemical and biological weapons, cluster munitions, incendiary weapons, and most importantly even nuclear weapons have been declared by international bodies, and weapons not being used for their after-effects can go to such a level of destruction, recompensing which becomes quite impossible. The efforts have focused on making the

Non-Proliferation Treaties viz; Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the Treaty on the Prohibition of Nuclear Weapons (TPNW), the Treaty Banning Nuclear Weapon Tests In The Atmosphere, In Outer Space And Under Water, also known as the Partial Test Ban Treaty (PTBT), and the Comprehensive Nuclear-Test-Ban Treaty are not only quite universal but it has also aimed at promoting nuclear-weapon-free zones globally to ensure justness about war for the good of mankind. However, interestingly there are permanent member nations of the Security Council that are also possessors of WMDs but are seemingly beyond the jurisdictions of these treaties to be complied with. This creates a polarized approach of the globe to treat the sustenance of non-discrimination in matters of retaining nuclear weapons as potential threats. In addition, recent reports have highlighted the fact that Russia has been coercive with Ukraine in their ongoing conflict about the usage of nuclear weapons to bring an end to the war and also used some chemical weapons unabatedly despite their congruence with International legal orders to curb these kinds of weapons in warfare. Another instance in this list of using banned and sheer destructive weapons is the Israeli force in the Gaza Strip. The forces deputed there are confirming this by openly accepting that Israel has dropped more than 25,000 tonnes of explosives on the Gaza Strip since October 7, 2023, which is equivalent to two nuclear bombs. This has led to the destruction of almost 2.3 million people in and around the zone. The indiscriminate attacks on hospitals, schools & universities, and other public institutions are the horrifying realities giving sheer negligence to every existing law and precursor to stop injustice at war. The UN

itself has reported repeated violations of the principle of protection against civilians in the ongoing Israel-Palestine war causing great damage to mankind and civilization at large. The protection officer has himself described the situation as ‘one which is unprecedented in human history to witness by the post-conflict world era of such a wide humanitarian law domain’. There are other constant conflict zones and lands of internal non-international armed conflicts all across the globe at present which though going unnoticed many times are also posing strict challenges to consider wars as ‘just’ at all.

4.3 Justness in recognizing ‘War Crimes and crimes against humanity’

Efforts have been taken by the leading international organizations in recognizing certain acts as war crimes, genocide, and crimes against humanity and taking all measures to address them and prohibit them in every possible manner. But the reality speaks something else yet. Episodes of unabated attacks on civilians, indiscriminate mass killings of children and women, and unstoppable genocide in every international and non-international armed conflict have become the new normal. The recent efforts of the ICJ(International Court of Justice) and ICC (International Criminal Court) to prohibit war crimes are also going in vain. Ranging from systematic and intentional killings, forced and mass displacement, pushing people to precarious maritime zones for the safety of life, rape, forced abortions, and child killings are going rampant in warzones without any remorse. Along with the use of every possible banned weapon, the sheer absence of any humane approach in the present war zones is creating strong walls of opposition towards the

presence of even a fraction of a just attitude by the force at war. The death toll and casualties at war are increasing by leaps and bounds every year. The year 2023 has been reportedly considered one of the deadliest years in terms of death at war. The UK-based charity Action on Armed Violence (AOAV) recorded a 122% percent increase in civilian fatalities caused by explosives in 2023. The rise is largely due to the war being fought between Israel and Hamas in Gaza. Conflicts in Ukraine, Sudan, Myanmar, and Somalia also contributed. U.N. human rights chief Volker Turk told the U.N. Human Rights Council in Geneva that “Global conflicts killed three times as many children and twice as many women in 2023 than in the previous year, as overall civilian fatalities swelled 72%”. The scar is getting pushed beyond the borders and has become an open wound on the global face which trying its best to restore peace; at least theoretically. In addition, practices of ethnic cleansing and marginalization, internal aggression percolating across domestic borders, unstoppable refugee movements, and mass exodus from various parts of the world even in the present century are clear-cut pieces of evidence of the fact that the globe is facing instability to its highest extent. These incidents are openly challenging the very presence of justness before war, at war, and after a war or even a conflict. There lies a very thin line, as to when justness turns out to be so utopian to believe or to consider it as an existing reality. In light of the present global context, the former is getting more veracity than the latter.

4. Concluding Annotations

This paper has diligently dealt with the ‘just’ war doctrine in its every phase of growth and oscillating reality since almost the beginning of cultured human growth till the present. In doing so, it has been grossly realized that justness is a crucial element in every human action, and war is no exception. Rather since the beginning of mankind, the just war doctrine has taken a central position. As wars are as old as human presence in their formalized form, the humanity quotient at war has been expected to keep that culture alive. However, as said earlier in many cases the indulgence of powers in a war while rationalizing its justness has been quite a tough task to undergo in every phase. Also, while the primary era has been too diligent in considering the justness behind a war as its basic essence, human growth and the multiplying complexities of the world have made people widen their domain of thinking about just elements concerning wars more specifically when they are being fought. With time, the doctrine has been looked into more meticulously and scrupulously. It has been manifested by many social-advocates, thinkers, and philosophers that justness is a rubric that is invincible for the sustenance and schematic pattern of war which can be accepted in a civilized society. Wars have accepted quite an inseparable phase of human reality which is treated as a last resort for any societal congregation to validate their demands. And so that the demand could be placed in a better and acceptable manner not hurting the sentiments of the commons at large; the justness was tried since time immemorial to be included in the spectrum of war and its related issues.

It has been observed and elaborated in the previous sections that; human civilization has all endeavours to treat wars as a last resort, to be fought with utter proportionality, while securing extra measures for the civilians to be kept in a safe and promising environment, away from war and treating only the objective for which war has been declared as the primary focus and not beyond it. However, the world has witnessed many historically set events (locally or internationally) wherein the community has crossed every understandable and logical jurisdiction of adhering to justness and overthrown the precursors of every principle that upholds justness in war. Starting from proportionality to indiscriminate use of force every possible dimension determined and acknowledged in the just war doctrine has been challenged time and again by the wars and conflicts. Some of them have made the global community to rethink the ways in which wars and their means and methods have been treated. The era of world wars specifically has set the tone to reestablish a world where wars if have to continue, must do that only under strict regulatory regimes. Though the inception of international humanitarian laws took much before this era, it got some cataclysmic changes owing to the changing dimensions and technicalities used at war. This also widened the global interpretation of treating war only as a means to be used for the greater good of common mankind of a larger identity like the state. Holding the hands of the United Nations as the parent international organization, resorting to war got shrunk to a more limited space and got subjected to many restrictions and interventions. Also, the unnecessary overhauling tendency of the powerful entities to overpower the smaller entities at the global level was discouraged vehemently. In addition, some

strict guidelines were initiated not only by UN but by other international and regional dispute settlement bodies that war can only be opted when all other ways of mitigating and addressing an issue has got failed. So, it can be widely said that wars were condemned at a larger scale to lessen the anti-human rights practices that come along with a war (international or internal).

But having so much of pre-cursors, laws, and regulations, adopted measures, and organizations dedicated to keeping close eyes on war, wars have become the most common international community reality. Ranging from internal insurgencies to international-level wars which are still ongoing while this chapter is getting drafted, makes us fall into the gap between the theoretical importance of justness in war (either behind it or within it) and its visible practical implications. The continuance of war has been accepted by the international community even if as a last resort to settle the conflicting differences, the most horrifying reality is the conduct of the parties at war and their adopted means, methods, and approaches at war. The careless quotient and the coercive attitude of the few states are drawing glaring differences in the world platform leading to more grey zones for us to look for a solution. Also, the political conundrums and just the rhetorical reality of equality among states are making things much more complex leading to much confusion and ultimately wavering off the just factor at war. Moreover, with time the subjects of international law have also widened a lot wherein now the non-state actors have also assumed the position as one of the subjects under international law. Many of these non-state actors have also

spearhead wars damaging the existing fabric of the world's endeavor toward peaceful co-existence. Another facet that exists as a bigger threat is adherence to the existing international law regime on banning the use of massively destructive weapons, prohibiting certain means and methods of warfare, addressing the humane cause behind war, and other related matters. As these laws are more or less still treated as soft laws to date and are found to have a very little binding effect on the sovereign states, even the states that have confirmed the treaties and conventions go beyond their binding to uphold their immediate gains. The ongoing scenario across the globe where the majority of territories and even some maritime zones are heavily succumbed to war or like situations, it is highly witnessed that very little or no allegiance is being showcased to ensure justness at any point of war ranging from its reason to its settlement. The question still is open-ended and poses a big challenge or rather scope for human civilization to think, rethink, and resolve with utter sensitivity as to how this constantly practiced custom of war culture can be mitigated so that the 'justness' at war can prevail for long continuance of mankind on this globe.

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Women's Right to Environment as a Human Right and Role of Women in Combating Climate Change – A Legal Study

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Introduction:

The natural resources of this beautiful habitat are distributed equally to all by the nature itself. Discrimination came later on to treat women as vulnerable entity in the society. The women are the world's half population and contributed towards sustainable development, nation, building, protection of natural resources etc. The United Nations Environmental Programme (UNEP) has given stress to the role of women in protecting the environment. Women and environment is the key document where the role of women and their active role in protecting the environment are being understood and propagated in a very strong way. In 1980's UNEP advocated for the role of women in protecting the environment. From 1985 to 2005 the UNEP works diligently in the field of organizing assembly on women and environment in Florida, introducing new policy on integrating gender activities appoint gender related responsibilities through holding various sessions, insuring publications etc. The world community of women and their role in sustainable, environmental management are being focused through various conventions. Various women across the world are take into one canopy to enhance sustainability in a better way. In July 2003 women's world summit foundation global new letter pointed out role of specific women in creating

sustainability in household area.(Sara Bock, Namibia, 2004). The role of women or natural resources preservation is very important as they can successfully contribute towards sustainable development and climate change mitigation with the help of their knowledge and expertise. Women are comprising half of the population in many countries in the world like in Nepal they are more than half of the work force agriculture, forestry and fishing etc. Though in Asia and pacific region they are not represented properly. Women having the capacity to cope up the crisis done by climate change. Access to clean water, energy and food and availability of the same having direct connection with women as they are managing the household core works. In this article through doctrinal methodology the author will try to point out the role of women in various environmental movements and mitigating climate change. The objective of the study is to share the knowledge about the women's contribution to develop good environmentalism all over the world. Hypothesis of the research is that women are having the utmost capacity to tackle the environmental issues in India nay world. Through discussion with various points relating to women and sustainable development, women and climate change, women and environmental protection etc. the article will give a precise view on the topic.

Women and Sustainable Development: Sustainability is the core issue of environmentalism in any country which inculcates the notion of continuation of environment and its resources for the future generation's right to life. Sustainable development goals are precise action oriented and to be achieved within a time framework 2030. In Rio Plus 20 the

concept of sustainable goals were taken into consideration which should be achieved by 2030 they are 17 in number. In every country women are the main contributors to take care the household and rearing up children for future. They also contributed towards the family income as wage earner. They are participating in every cultural sector as farmer; they are taking the position of entrepreneur, teacher, officer, doctor, engineer, pilot and startup. Sustainable development goals secures no poverty which can save the poor women folk. Right to education can save their childhood days and by securing access to natural resources to every women the concept of Nourishment of the World community can done in a better way. Zero hunger denotes women also having the accessibility and availability of food. By securing the food availability to the women sustainable development and right to health are protected. According to SDG 6 access to clean water, ensuring availability of water to all includes the right to water of women also which is a fundamental right as the women are doing the household works they can protect the water conservation by sustainable management of water. In various countries we can see the women are engaging in collecting water from miles away even they have to compromise themselves in some area to have access to water. Lack of access to sanitation also a breach of fundamental human rights and the UNO is striving towards protecting the right to water specially for the women through various policies. Women are the primary energy managers of their household and to conserve the clean energy they can play a very important role for future generations. Climate change is the most important problem of today's world which changes our right to life and many more things in recent years.

Adequate women empowerment and education can secure combating of climate change in a more vigilant way. The UN women are working towards climate change combating and mitigating. The women if empowered are the key decision maker of the family and the government which can bring a change towards maintaining sustainable development in future world. Women population of the world is now half of his total population and millions of women are working in marine fisheries, packaging, marketing, processing etc. The risks of ocean degradation are also faced by the women who are working in these sectors. As the vulnerable community the policy and strategy should be beneficial for the women who are working in these industries. SDG 15 talks about protecting, restoring and promoting sustainable use of terrestrial ecosystem, sustainably managing forest, combat desertification and halting biodiversity loss. In the developing country like India the women are playing influential role in traditional knowledge practices and using the forest products. The implementations of the SDG goals are much more depending on the role of women they are position in life, success, gender equality they face etc. In protecting the sustainable development of the world community the women having great role to play. elimination of discrimination of the women, girls, empowerment of women, protecting their rights, gender equality, the UN women is working in a very diligent way.(WOMEN AND SUSTAINABLE DEVELOPMENT GOALS, n.d.)

Women's Role in Mitigating Climate Change:Climate change is the most important challenge of today's world we are facing. It affects the right to life of every human being in

World nay India. The problem of climatic change can affect the environmental, economical, humanitarian, aspects of life. The poor and the vulnerable are facing more problem due to climate change and the women folk comes under the vulnerable section due to their continuous struggle. The climate change issue though gender neutral affect mostly the women as they are striving to collect household things to maintain their family. In addressing climate change the world party should take a note the impact of climate change upon women and what they can contribute towards mitigating it. Women are facing unequal burden of climate change may be as victim or as a stakeholder. The women having specific traditional knowledge in some community regarding climate change and they are fostering they are dependent in the family. They having powerful skill and knowledge sometime to tackle the issues of climate change. Climate change is a road block in all kind of human right enjoyment. Climate justice ensures the rights of the vulnerable community to be protected in an equitable manner. The UN Secretary General Ban Ki Moon declares the year 2015 as a year to combat climate change. Women empowerment was also declared as necessary as for the greater making of the world. CEDAW 1979, 1994 4th UN World Conference on women, SDG and MDG Goals all can be seen as a valid document of women empowerment and can be seen as a way out to answer the problem of climate change in a more precious way. The Beijing conference can be seen as a good document interlinked with the environmental promotion and women's role. The UNSCR 1325 is an UN document which talks about women peace and security while combating climate change. The CEDAW was adopted in 1979 which having a linkage

with the women and climate change and the women's role in sustainable development. Climate change is a threat to all having no boundaries and it effects the women folk in much more severity. In global south that is in developing countries women are majority in agricultural, production, food chain, sector and their lifestyle are directly threaten due to climate change. The marginalization and vulnerability of the women are spreading the harm in a more magnificent way in the time of the disaster. Climate change impacts can be seen in change of natural weather, sea level rise, change of monsoon behavior, floods and droughts, deforestation, water scarcity etc. Every kind of activity having specific impacts in the life of the women in a country like Senegal the women are working to combat sea level rise, salinization as their main cultivators.(Mayesha Alam – Associate Director, GIWPS et al., n.d.)

Women Environmentalists: The role of women in protecting the sustainable development and environment was started in the early sixties. The book of Ester Boserups on women's role in economic development has established some connection between women and environment. During 1980's the gender issues in environmental protection was noticed by the policy makers and the environmental management started to take note about the role of the women in protection of the environment. World Bank in 1991 said in a report that the women having an essential role in natural resources management with their traditional knowledge. Women environment and development is a new approach where the role of women can be seen in a more integrated way. The developing countries the presence status of women are not in

a stronger condition though the women are playing an important role as a homemaker in household. In present era urbanization, industrialization and globalization has created a sea change in gender issues and the recognition of women's contribution is now prioritize. The women are playing a great role now as environmental activists, advocate, educators etc. The New York Ladies is a health protective association for cleanliness and hygiene of the women. Women environmental discourse have its own ideologies which includes ecofeminism. The women are enjoying connectivity with the nature in this global scenario according to this ideology. The wed discourse given importance to the issues relating to the women and environment and they advocated for the protection of environment by the women. To looking after the planet no other community is greater than the women who are contributing more to protect the green environment of the world through activism in a daily basis. Gender equality acknowledges by the SDG Goals V. Women having a great role to conserve the environment since long.

Rachel Carson can be named as a great environmentalist who contributed to create a great literature called Silent Spring. The book addressed climate change, wildlife protection and raise environmental awareness in a greater way.

Wangari Maathai was a Kenyan biologist. Who get Nobel Prize for improving the sustainability. She founded green belt movement to improve the environment.

SaalumaradaThimmakkais the mother of the trees and great environmentalist of India who planted 385 banyan trees and 8000 other trees. She received Padmashri in 2019.

Vandana Shiva is the great eco feminist of today's world. She advocated for climate change, mitigation, inequality, hunger etc. She founded women's environment and development organization (WEDO).

Greta Thunberg is the child climate activists of Stockholm who initiated Friday For Future Movement to secure the planet in a more better way.

Ecofeminism: Ecofeminism is a movement connected to the theme of women and nature. In the patriarchal system the male dominance creating an environment of discrimination against the women and the exploitation of nature continue to raise environmental problems which was started to affect the women politically, socially and economically. In 1974 Françoise d. Eaubonne started to coinage for the first time. The type of oppression exploitation of women and nature are interlinked. Ecofeminism is the answer against the male dominance in oppression nature and women. As the women are entrusted with the household duties they are under the dominance of men. Ecofeminism is the concept which rejects the hierarchy between men and women. (Yıldız Merve Öztürk & İzmir Demokrasi Üniversitesi, 2020) Climate change has created worse impact on the life of women, health, safety and wellbeing and the burden of climate change is coming heavily upon the women. Climate crisis and gender equality is the key perspective of ecofeminism which means ecological

feminism which points out the relationship between women and nature, oppression of women etc. Gender based oppression and climate crisis are connected issues and the idea of ecofeminism strikes the exploitation of both. (Shi Woo Ji, 2003) Ecofeminism having great influence on the feminist movement. Ecology, women and the concept of ecofeminism are the new ideas regarding a socio natural movement which recognizes the role of gender equality in a greater way. Environmental degradation and feminism are related concept which needs to be answer to enhance sustainable environmentalism. Sherry Ortner's 1972 talks about women and nature their relation and subordination of the women under the male dominance. Simone De Beauvoir's, *Second Sex* also described the interconnection of women and nature. Sherry Ortner took the point of women inferiority and analyze the women vulnerability, their handicapped position in the society and exploitation. She said that the global devaluation of women are has its roots in separation of nature and culture. Salleh 1993 also talks about ecofeminism who given prominence of male dominance and women vulnerability. According to Salleh the women's reproductive capacity is more connected to natural philosophy and both having great connectivity and the ecofeminism can represent the women's need and environmental sustainability with active movement.

The Indian philosophy of ecofeminism can be started by the Vandana Shiva where women and nature having its connectivity to culture, cohesion and disintegration. The women in India are called the incarnation of Shakti and the nature is called Prakriti and in another terms men and women are manifests as Purusha and Prakriti who are though dual but

united as husband and wife. According to Vandana Shiva they are not opposing each other and according to her the connectivity of nature and women is the source of subjugation.

Bina Agarwal said the theory of Vandana Shiva is not like western feminism and the connectivity of development and environment having its own impacts in the society. Bina Agarwal constructed a new idea called feminist environmentalism, where women and environmental linkage can be seen through the get way of gender, class, caste and race.(Anandita Majumdar, n.d.)

Women's Environmental Movements in National and International Arena:

Women take part in various environmental movements all over the world from ancient time till date. To protect the environment, biodiversity, sustainability women's contributed much more. In the industrialized country women took proactive role to combat environmental pollution. In Indian scenario we can name Chipko Movement, Jungle Bachao Andolan, Silent Valley Movement, Narmada Bachao Andolan etc. The Rio Convention and UNCED (United Nation Convention on Environment and Development) have gender sensitive environmental action provisions. According to a survey done by Swedish Government survey the women having more contribution in maintaining greenhouse hold and creating smaller carbon footprint.(RashmiMathur et al., 2023) WEDO (Women's Environment and Development Organization) was established in 1992 under UNCED to ensure women's participation in environmental approaches with gender equality for ensuring economic and social

justice. The UNFCCC (United Framework Convention and Climate Change), COP (Conference of Parties) provide genders specific inclusion regarding sustainability. Environmental movements in India can be seen according to Harsh Sethi can be seen in different way which includes forest based policy, industrialization, protection of dam, combating industrial pollution and against indiscriminate use of marine resources. (Rashmi Mathur et al., 2023) India's environmentalism having its root in the practice of women's contribution in sustainable development. The example of Odisha's Thengapalli is the practice where the women are protecting forest since long by patrolling groups with a stick in hand. Amrita Devi of Rajasthan can be named as first female environmentalist of existed three hundred years ago. Parbati Barua is a trainer and teacher of elephant and taking care of them to save the elephants. Sarala Behan the Gandhites was a famous environmentalist in post independent era. Suryamani Bhagat of Jharkhand was an activist who with other tribal women took a leading role to save the forest. Sugatha Kumari a poet and environmentalist were also contributed towards Silent Valley Movement. Suprabha Seshan is also a great environmentalist and recipient of Whitley award for advocating reforestation. Dayamani Barlaa tribal women of Jharkhand can be named as a protector who works for protection of the environment. Maneka Gandhi is a leading animal welfare activist in India.

Lois Gibbs of US was an environmentalist who protests against chemical pollution. Marina Silva of Brazil was an activist and protector of sustainable development and awarded the Gold Man Environmental prize. Julia Butterfly

Hill of USA is renowned environmental activism she took for the protection of the forest. We can name the contribution of Greta Thunberg of Stockholm as a child protestor who contributed much more in protecting the earth from the worse effect of climate change. She along with other children's has been quitting the school to take a call to address the climate change issues. "Friday for future is the name of their movement which is a very famous activism all over the world till date in climate change combating.

Concluding Remarks:

Clean and healthy environment is the basic human rights as provided by the human rights declarations. Respecting the women's right to environment and sustainable development is the emerging notion to prevent gender discrimination in environmental matters. Women's environmental right is the basic human right which ensures accessibility of natural resources to the women in equal manner. The International humanitarian law like ICCPR (International Covenant on Civil and Political Rights) talks about nondiscrimination in case of access to human right which includes environmental rights. CEDAW (Covenant on Elimination of Discrimination Against Women) Article 15 also ensures equal rights of women in every sphere of life. The Aarhus Convention and the Escazu Agreement talks about the environmental justice and access to it by the women. So women and environment is a very important relationship where the state should provide gender responsive attitude.(United Nations Human Rights Office of the High Commissioner, n.d.) Environmental movements of today are leading by women across the world and through this the preservation of women rights are done in

the developing countries. The rural women performing agricultural activities can have more connection with the nature. In addressing climate change the vulnerable communities of women are taking more responsibility to maintain sustainable development today. They are sometime leading the climate projects to accelerate the mission of protection of environment. Women have contributed towards protection of environment since long and the new arena of ecofeminism are now emerged as a potential sphere to enhance the role of women in maintaining sustainability.

Suggestion:

- 1) The women should lead the environmental movements in national, local and global levels for greater achievement in combating climate change.
- 2) Not only the mere presences of women in climate matters are required but as a stakeholder they should have the capability, potential and expertise to combat climate change.
- 3) In the least developed countries the women are in vulnerable condition that should be given more access to financial resources to eradicate the menace of climate change.
- 4) To address climate change issues the inclusion of women community can be a very smart approach of today.
- 5) The women should enable themselves to earn their livelihood and having the economic independence which can create more investment in climate change mitigating and adapting.
- 6) Ensuring gender equality in the matter of environment and equal participation of women in decision making process

related to environment can protect the environmental human rights in a better way.

- 7) Ensuring access to environmental justice awakening of women to take proper approach to protect the environment and address the gender based violence in environmental matters can ensure a good society having fundamental human right.
- 8) Cooperation internationally and nationally regarding the implementation of gender responsive actions can protect the environment in a better way.

Participation of Muslim Women in Politics

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Politics is the progeny of political engagement, which is the mother. As it produces, nurtures, develops, rules, and shapes politics, the former is of utmost importance to both the country and the individual. Because of this, political engagement in every aspect of a nation's affairs defines its politics, and despite the fact that women make up close to half of the population, their political importance is far less than that of men. Women make up the bulk of the population. Women have always been viewed as second-class citizens in communities where men dominated, as is evident from history. The potential of women has been limited by forcing them to carry out domestic tasks within of four walls. Indian women were not allowed to leave their homes. Their freedoms and rights had been revoked. Enrolling them in school was prohibited. They had an idea of the perfect housewife. They have no access to opportunities in society, politics, the economy, or health. Women must be given more influence if civilization is to advance. Muslims have a tremendous influence on Indian society. The largest minority in this nation is them Emerging nations like India are currently concerned about the empowerment of women. It is thought that a number of factors, including the "invisible" role and "marginal" social status of women in Muslim societal dynamics, have hampered the development of Muslim society. The rate of women's emancipation is in

danger within the greatest Muslim minority. Lack of social chances for Muslim women is a severe issue that needs immediate attention.

After World War II a pledge was taken by almost every nation to empower women and make necessary amendments in their Constitutions to provide equal rights to women as they were also an integral part of society, and excluding them would diminish the chances of all round development. But rarely there were occasions when they were treated at par with their male counterparts. Demographically, they constitute an equal part of the population, but not even a single indicator shows their equal status with men in any stream, be it social, economic or political. In the case of minority women, it becomes a double disadvantage.

Our Constitution provides rights to women. Various Acts have been formulated from time to time to empower them. Different schemes at Central and state levels are also formed; strong steps are taken towards positive discrimination in order to bring them into the mainstream. But all these provisions look perfect on paper. In reality, quite often a gender gap is evident. And Muslim women are worst hit. In the field of politics their low representation and lower visibility stand out. In many countries women were granted “right to vote” after a long and hard struggle. Though India is the largest democracy and women of all religions have got the adult suffrage together with men. The Preamble of the Constitution says¹;

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

The word socialist is used for social and economic equality and to show that there shall be no discrimination on the basis of caste, colour, creed, sex, religion and language. We have well taken care of the caste system in India, but our efforts are not enough in case of sex and religion. Though the word democracy itself signifies that everyone should be equal and can vote if she/he is above 18 and not otherwise debarred by the law, and can also contest provide the other requirements are met as per the rule. Despite fulfilling the requirement, we never found occasions in any of the 18 Lok Sabhas' life as well as in the state legislatures when women were represented equally.

Role of Muslim Women in Indian Politics Since Independence

The political landscape of India has undergone significant transformations since its independence in 1947, and the role of Muslim women in Indian politics is a testament to these changes. Despite facing numerous socio-cultural and

economic challenges, Muslim women have emerged as influential figures in Indian politics, contributing to the country's democratic processes and social reforms. This essay explores their journey, the challenges they have faced, and their contributions to Indian politics since independence.

The participation of Muslim women in Indian politics can be traced back to the pre-independence era, where figures like Begum Rokeya Sakhawat Hossain and Bi Amma (Abadi Bano Begum) were active in the struggle for independence and women's rights. However, the partition of India in 1947 and the subsequent socio-political upheaval created new challenges for Muslim women, often pushing them to the margins of political discourse.

Post-Independence Challenges

Post-independence, the socio-economic conditions of Muslim women in India were shaped by several factors, including educational backwardness, socio-cultural restrictions, and economic marginalization. These factors limited their political participation. However, over the decades, there have been concerted efforts to improve the educational and socio-economic status of Muslim women, which have, in turn, impacted their political involvement.

Prominent Muslim Women in Politics

Several Muslim women have risen to prominence in Indian politics, breaking barriers and setting examples for future generations.

1. **Begum Aizaz Rasul:** She was the only Muslim woman member of the Constituent Assembly of India, contributing to the framing of the Indian Constitution. Her participation highlighted the importance of including diverse voices in the nation's foundational document.
2. **Shah Bano Case:** The landmark Shah Bano case in the 1980s, though primarily a legal battle for alimony, had significant political repercussions. It brought issues concerning Muslim women's rights and the Uniform Civil Code to the forefront of national discourse, influencing political debates and policies.
3. **Syeda Saiyidain Hameed:** A prominent educationist and social worker, she has been a member of the Planning Commission of India, contributing to policy-making and advocating for women's rights and education.
4. **Shabana Azmi:** An acclaimed actress and social activist, Shabana Azmi has used her influence to address social issues, including those affecting Muslim women. Her work in both the cultural and political arenas has highlighted the intersection of arts and politics in advocating for change.

Political Representation and Grassroots Movements

The political representation of Muslim women has gradually increased. They have been elected to various legislative bodies, including the Lok Sabha (House of the People), the Rajya Sabha (Council of States), and state legislative

assemblies. This representation, however, remains limited compared to their population proportion.

At the grassroots level, numerous Muslim women have been actively involved in local governance through Panchayati Raj Institutions (village councils). The 73rd and 74th Constitutional Amendments, which mandated the reservation of seats for women in local governance, provided an opportunity for Muslim women to engage in politics and decision-making processes at the grassroots level. The 73rd and 74th Constitutional Amendments, which mandated reservations for women in local governance, have been instrumental in increasing the participation of Muslim women at the grassroots level. Examples include:

- **Razia Sultana:** A Panchayat leader who has championed local development and women's rights in her community.
- **Shaheen Anam:** Active in local governance and known for her work in promoting education and health in rural areas.

Present Scenario:

Since Independence around 690 women have been elected to 18 Lok Sabhas, of them around 25 have been Muslim women. The 18 Lok Sabha has 74 MPs, with West Bengal sending the most women to the House. The 17th Lok Sabha has the highest ever number of women politicians with a total of 78 which is nearly 14%. The earlier Lok Sabha had 62 women MPs. The average age of 17th Lok Sabha is noted to be 54 years and 12% of MPs are below the age of 40.5 out of

18 Lok Sabhas have had no Muslim member.

Table 1: Women particularly Muslim Women in 16 Lok Sabhas

Lok Sabha	Total Number Elected	Total Women Elected	Muslim women Elected	Projected No. of Muslim Women(@7)
1	543	24	Nil	38
2	534	24	02	37.3
3	540	37	02	37.8
4	553	33	Nil	38.7
5	553	28	Nil	38.7
6	557	21	03	38.99
7	566	32	02	39.6
8	567	45	03	39.6
9	534	28	Nil	37.3
10	555	42	01	38.8
11	551	41	02	38.5
12	546	44	Nil	38.2
13	567	52	01	39.6
14	586	52	02	41
15	560	64	03	39
16	541	63	03	37.8

Courtesy: <http://164.100.47.132/LssNew/members/lokprev.aspx>

If the Muslim women were represented according to their proportion of population, they would have been always around more than 35 in number. (Consider 13.5% Muslims Population of the total national population, since female population is almost equal to the male population, it may be assumed that half of the 13.5% or 7% would be Muslim women) But Muslim women's membership never went

beyond three in any of the sixteen Lok Sabhas. There are about five occasions when no single Muslim woman was there.

Rajya Sabha

So far as Rajya Sabha is concerned, there were about 242 Members (as on October 28, 2014) of whom 30 were women, but only 4 women members were Muslim. From 1952 to 2010, there were only 15 Muslim women who entered the Upper House either through separate process of election or nomination.

State Legislatures

The picture is not much different at the state level. Less than 8% women are represented in the state Assemblies. Muslim women are almost negligible. In Assam Legislative Assembly, there are 14 women members, of whom only one is a Muslim woman. In what marked her electoral debut, Sofia Firdous of the Congress was elected MLA from the Barabati-Cuttack seat, defeating BJP's Purna Chandra Mahapatra by a **margin of 8001 votes**. While Firdous won 53339 votes, Mahapatra secured 45,338 votes, according to the Election Commission of India (ECI).

Political Heads and Executive

Their presence at the top position is negligible. We had so far 16 Lok Sabha elections, but the country saw only one-woman Prime Minister. Muslim men or women so far have not enjoyed this position. Similarly, there is only one occasion when the incumbent of the office of the President of India

was a woman, but Muslim women are yet to open their account. So far as states are concerned, of 29 states and 7 Union Territories only three states are headed by women as chief minister, but none of them is a Muslim. Out of the Governors and Lt Governors/Administrators of 29 states and seven Union Territories, only two are women, but there is no Muslim woman.

Committees

Parliament at the Centre and Legislative Assemblies at the state level form advisory bodies to run their business smoothly. They are called committees. Some of them are permanent committees while others are ad hoc. At present there are about 36 Lok Sabha committees⁷ only three are headed by women and none of them is headed by a Muslim woman. Similarly, in Rajya Sabha there are at present 12 standing committees (others are joint committees), none of which is headed by a Muslim woman.

Controlling Business of the Houses: Proceedings of the Houses (Lok Sabha and Rajya Sabha in Parliament and Legislative Assemblies and Legislative Councils at the state level) are controlled by the Speaker (Lower House) and Chairman (upper House). Of the 16 Lok Sabhas we never saw a Muslim Woman Speaker and in Rajya Sabha no Muslim woman occupied the post of Chairman. Of the eighteen times deputy chairmen's post in Rajya Sabha saw four occasions when a Muslim woman was the incumbent⁸. Interestingly, on all these four occasions only one, Najma Heptullah, was there.

There are many inferences drawn of Muslim women as stereotype, but most of the time they have challenged their stereotyped image and proved their ability. They have also contested elections as independent candidates. After the six Lok Sabhas, statistics shows that very often Muslim women contested on their own and their affiliation with parties was insignificant, especially with the major parties.

Table 2 : Muslim Women’s Party Affiliation

Lok Sabha	Muslim Women Contested	Independents Muslim women
7 th	9	6
8 th	7	5
9 th	11	09
10 th	14	06
11 th	37	32
12 th	15	09
13 th	26	11
14 th	21	06

Table 3: Other Women's Party Affiliation

Lok Sabha	Total No. Of Women Contested	Women Contestants from Political Parties	No. of Women Elected	No. of Women Elected from Political Parties
6 th	70	41	19	17
7 th	143	77	28	27
8 th	162	63	42	39
9 th	198	87	29	26
10 th	314	N.A	44	N.A
11 th	599	125	40	36
12 th	274	107	43	31
13 th	284	104	49	35
14 th	355	110	50	30

Courtesy: http://rajyasabha.nic.in/rsnew/publication_electro_nic/reserv_women_pers_2008.pdf (Election Commission of India)

The above statistics indicate Muslim women are not backward, but marginalized in politics.

The reality is that most of the parties do not push them towards power. Even those who are demanding reservation within the reservation system do feel hesitant towards their candidature. Parties live on Muslim vote, die for Muslim

vote, but shy away from making them visible in their party. This is evident from data which show that since independence not more than three candidates were fielded by any party at one time. And that, too, on very few occasions. Though Congress and Bharatiya Janta Party are the largest national parties their Muslim woman affiliation is negligible.

Challenges and Way Forward

Despite these strides, Muslim women in Indian politics continue to face significant challenges, including gender discrimination, socio-economic barriers, and communal prejudices. The intersectionality of their identity as both women and Muslims often compounds these challenges, making their political journey more arduous.

Challenges and Barriers

Despite progress, Muslim women in Indian politics continue to face significant challenges, including:

- **Gender Discrimination:** Persistent gender biases hinder their political careers.
- **Communal Prejudices:** Muslim women often face communal discrimination, impacting their political prospects.
- **Socio-economic Barriers:** Economic hardships and lack of access to quality education remain significant obstacles.

To enhance the political participation of Muslim women, several steps can be taken:

1. **Educational Empowerment:** Improving access to education for Muslim women is crucial. Education not only empowers them but also provides the knowledge and skills needed to navigate the political landscape.
2. **Economic Opportunities:** Enhancing economic opportunities through skill development and employment can provide Muslim women with the financial independence necessary for political participation.
3. **Legal Reforms:** Legal reforms that protect and promote the rights of Muslim women can create an enabling environment for their political involvement.
4. **Support Networks:** Building support networks and mentorship programs can help Muslim women navigate the political landscape, providing them with the necessary guidance and encouragement.

Recent Developments

In recent years, the political engagement of Muslim women has increased, with more women contesting elections and assuming leadership roles. Notable contemporary figures include:

- **Arfa Khanum Sherwani:** A journalist and political commentator, she has been vocal on issues of social justice and minority rights.

- **Ishrat Jahan:** An activist and politician who has been involved in significant social movements and political campaigns.

Conclusion

It is a popular fallacy that Muslim women are orthodox and socially backward, economically deprived and culturally underprivileged. But why are they so? Who stereotyped them? Surely, it cannot be their religion, because Islam is the most liberal religion and it has provided equal rights to women. Women also have shed their stereotyped role and have shown their caliber whenever they have been provided with responsibility. But it seems some factors are mainly responsible, including the patriarchal heritage and mentality of political leaders. Constitutionally, they have as much rights as men in decision-making process, but on the ground, it is merely symbolic. In reality, they are continuously affected by the decisions made by others, who are male. Lastly, they are at a disadvantage in the world-system tradition, macro factors such as trade networks, foreign direct investment, national debt, and GDP.

These analyses shed considerable light on the processes as that produce and reproduce inequalities. Though these macro factors are important indicators of dependency and relative global influence of nations, but obscure the gendered character of organization. These macro-structural factors include those activities which are typically men and male-oriented, while the activities of women are neglected. Thus, it

would not be wrong to say that the pace at which we are moving, Muslim women will be able to bridge this gap in politics in many decades.

The role of Muslim women in Indian politics since independence is marked by resilience and gradual empowerment. Despite significant challenges, their contributions are crucial to the inclusive growth of Indian democracy. Ensuring greater political participation of Muslim women is essential for the socio-economic upliftment of the community and the strengthening of democratic processes in India. As India continues to evolve, it is imperative to create more spaces for Muslim women in politics, recognizing their contributions and addressing the barriers they face.

Historically in Islamic societies, the women's role has been within the home, which has limited and created obstacles for female leaders. Muslim women face a double bind--discriminated against both as women and as Muslims. "In terms of cumulative discrimination--being a Muslim and being a woman--there is a compounding effect for sure," said Gilles Verniers, a political science professor at Ashoka University and co-director of the Trivedi Centre for Political Data (TCPD). "The usual barriers to entry that apply to all women, apply even more strongly to Muslim women."

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