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Role of Legal Aid in Contemporary India

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Abstract
Legal Aid is professional legal assistance provided free or at nominal cost to indigent persons who need help. It is necessary to maintain rule of law and stability in the society. The purpose of this research paper is to scrutinize the problem of illiteracy, destitution, and economic and lack of awareness among the disadvantaged groups and whether the legal aid services are properly delivering to the needy or not. The prime concern is internal obstacles like lack of understanding law, inability to deal with cases, corruption etc. It is necessary that government must take steps to ensure legal aid services to poorer sections are implemented and encourage advocates to serve poor. Legal Aid is not charity it is the duty of state and right of citizens, hence it should be such that it ensures the Constitutional pledge of equal justice to poorer and weaker section of society.

Keywords: justice, rule of law, legal aid, constitution, equal justice

1. Introduction

"*There can be no equal justice where the kind of trial a man gets depends on the amount of money he has*."

Justice Hugo Black

The preamble of the Constitution of India also believes that there shall be Constitution which shall strive to provide justice in all forms particularly "social, economic and political; liberty of thought expression, belief faith and opportunity." Illiteracy, rising corruption, destitution, lack of knowledge are some of the main factors which has veiled underprivileged class from being noticed by the formally established legal system.

There are various organizations and committees established for this noble purpose. The reports of different commissions directed the state to provide for free legal aid to the poor. As mentioned under the 40th paragraph of Magna Carta "To no one will we sell, to no one will we deny, or delay, right or justice". Equal justice serves as the sacrosanct foundation of the Constitutional Justice.

The Legal Aid is worshipped as one amongst the basic Fundamental Right granted to every citizen of India and is available under one of the most cherished as granted under article 21 of the Constitution of India. The directive principles of the state policy grants equal justice and free legal aid to every citizen. The article 39 A of the Constitution states "the state shall secure that the operation of the legal system promotes free legal aid, by suitable legislation or scheme or in any other way to ensure opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

However apart from all these section 304 of CRPC grants legal aid to the accused at the expense of state as stated-"Where in a trial before the court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has no sufficient means to engage a pleader, the court shall assign pleader for his defence at the expense of the state". Order 33 rule 17 of CPC 1908 states that if an indigent person is not able to avail the legal services then the court shall exempt him from paying court fees.

2. Historical background

Independence of Judiciary is very important for protecting the legal, fundamental rights of citizens and everyone. However unless judicial system is easily accessible to all no country can develop and grow in effective manner. The haves can approach Court of law easily but indigent and poor should be given equal opportunity to get their rights enforced. It is duty and obligation of state to provide compulsory legal aid to everyone who cannot afford due to economic or any other reason.

In India where basic rights has been enforced as fundamental by Constitution Article 14, 21, 22 then at same time by Article 39A Constitution makers put obligation on state to help the poor and needy, emphasis on legal poverty i.e. incapacity of people in making full use of laws and its institution, it has been now accepted as function of 'Welfare State'. Article 39A provides that state shall promote legal system which provides justice on basis of equal opportunity and provide legal aid by suitable legislative enactments or schemes or in any other way, to ensure opportunity for securing justice is not denied. As right to legal aid is Directive Principles, one might question that whether Constitution makers and government just provided a lip service to public and made it toothless tiger. However this view is not valid as Article 39A has been made mandate by statutory enactment of Legal Service Authorities Act 1987 and also setting up of Permanent Lok Adalats and hence Article 39 A is enforced.

The first step regarding legal aid was prior to independence in 1945 when a society named Bombay Aid Society was set, post -Independence State Legal Aid Committees were formed, 14th *Law Commission Report* and Central government scheme 1960, National Conference on Legal Aid 1970 also came into existence.

2.1 Law Commission Report (1958)

Under Chairmanship of Mr. M.C. Setalwad then Attorney General of India who in his report investigated various aspects of judicial administration of nation. Commission suggested outlines to make some changes in Judiciary for speedier and less expensive justice. It was held that it is the state obligation

to provide legal aid and rejected plea that legal aid will make people more litigious, increase litigation or put load on budget etc. Also lawyers and legal fraternity should take moral and social responsibility for implementing free legal aid to poor.
It was also recommended that NH Bhagwati committee report given regard to Bombay should be applied in all states. Committee recommended for immediate setting of legal aid clinics in each High Court Bars by changing High Court rules [1].

2.2 PN Bhagwati Committee Report (1971)
Under chairmanship of Justice PN Bhagwati, the judge who observed "even while retaining the adversary system some changes may be effected where the judges be given participatory role in the trial so for poor, placing them in equal footing with the rich in the Administration of justice" [2].
The focus of commission was indigent people seeking justice. Also it wanted rules and legislation must be made considering socio- economic conditions of the country. The report stated in detail the Constitution and working of different legal Committee
(i) Taluka Legal Aid Committee
(ii) District Legal Aid Committee
(iii) State Legal Aid Committee

2.3 Krishna Iyer Committee Report (1972)
Justice Iyer was Chairman of similar commission setup in 22nd October, and dealt with nexus of law and poverty. His emphasis was on PIL and widespread of legal aid system that reaches people rather than people reaching the law [3].

2.4 Juridicare Committee Report (1977) [4]
PN Bhagwati and Krishnan Iyer submitted a joint report named "report on National juridicare Equal Justice – social justice in 1977". It recommended establishment of National Legal Service Authority (NALSA) [5] which will be accountable to the parliament.
Unfortunately Bhagwati, Iyer report remained in the shelf along with National Legal Service Bill. In 1980 central government constituted another committee for implementing legal aid scheme i.e. "*Committee for Implementing Legal Aid Schemes (CILAS)"* however there were certain deficiency in the working of CILAS hence central government enacted Legal Service Authority Act 1987 which came in power on 9thNovember 1995. The Act stated to establish National Legal Service Authority, State Legal Service Authority, District Legal Service Authority and setting up permanent Lok Adalats. The Act further provides supervision over State Legal Service Authority and District Legal Service Authority by the National Legal Service Authority.

3. Legal Service Act
An old saying that "ability is of little use without opportunity". There is a need of opportunity to claim for one's rights and defend oneself as and when required and an urge towards legitimate claims. Equality and equal opportunity serves to be of great importance as without equality the rights would not gain any meaning even if they have statutory base.
The concept of article 39 A was pre-existing and it was later incorporated under the articles 14, 21 and 22 of the Constitution of India as Fundamental Right. Both the substantive and procedural law were required to be reasonable and must be according to the provisions of Article 14 and 21 of the Constitution of India. As held under *Maneka Gandhi v Union of India* [6] the concept of reasonableness was first developed, there was development of procedural law as well as the right to secure fair and expeditious trial according to the provisions as stated in the article 21 of the Constitution of India. Section 304 of the criminal procedure code 1973 which granted legal assistance to the accused at the expense of the State which implies that the provision of free legal aid existed even before the enactment of the Legal Service Authorities act, 1987. In *Hussainara Khatoon v Home Secretary [7]* it was held by the Supreme Court that while providing legal aid and assistance the elements of reasonableness, fair and just procedure cannot be negated. In absence of these elements the person seeking for legal aid shall be denied justice on economic and other disabilities. In the case of *Sheela Bharse v State of Maharashtra* [8] the supreme court observed that providing legal assistance to the accused who is arrested and under facing grave peril of his life and liberty has been considered to be Constitutionally valid as mentioned under the Article 39 A, 14 and 21 of the Constitution. It is the fundamental right of the accused under the jeopardy of life and liberty to secure free legal assistance. However in the case of *Centre of legal research v State of Kerala* [9] the apex court directed the State government support voluntary organizations and various social associations engaged into provision of free legal aid.
There were various loopholes found during the working of CILAS and this served as a pathway for the statutory establishment of legal service authorities at national, state and district levels. The Legal Service Authorities Act was enacted in the year 1987 which further came into force on 9th November, 1995. The act provides the mechanism for functioning of National Legal Service Authorities, State and District level legal service authorities. The act was enacted under the supervision of Justice R.N Mishra who was then the Chief Justice of India.
The LSA act fulfils all the main objectives as led down by the framers of the Constitution under part IV and Article 39 A. The article empowers the state "to secure that the operation of the legal system promotes free legal aid, by suitable legislation or scheme or in any other way to ensure opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."
The main question which arises in the mind with regard to legal aid is that who are the persons eligible to secure the benefit of free legal aid? The answer lies under the context of section 12 of Legal Services Authorities Act. The free legal assistance shall be provided to: women, children, schedule castes, scheduled tribes, beggar and victims of human trafficking, industrial workers, and persons kept in custody, economically challenged individuals.
The Section 8 of LSA act serves as guideline for state legal services authorities act. The State legal service authority (SLSA) must work corresponding with the rules of the Central government

3.1 Procedure for Application of Legal Aid
The control and management of legal service authorities shall be under panel lawyers or paralegal volunteers. The one who seeks legal aid could address their complaints and grievances either through an E-mail, oral or in written form in the main

office. The question whether an application falls under the eligibility criteria could be proved through an affidavit under section 12 of the LSA act.

The matters concerning litigation must be addressed to the monitoring committee which includes Member Secretary or secretary of LSA and other legal practitioners who shall decide in the time limit of eight weeks that whether an applicant shall be benefited to free legal assistance or not.

3.2 Lok Adalats

The section 19 of the LSA act authorises the settlement of disputes by the Lok Adalats. The central, the state, the district and taluk legal service committees shall be responsible for the establishment of Lok Adalats which settles the dispute through the mechanism of compromise between the parties. There are certain conditions stated under the article 20 of the LSA act. The cases could be referred to Lok Adalats only upon the consent of the parties through an application or only if the court considers the case as appropriate for Lok Adalats to be dealt with. The Lok Adalats are governed by the principles of Justice, Equity and fairness in order to arrive at compromise between the parties [10].

The main objective of Lok Adalats is to create friendly environment to combat antagonism and suggest alternatives and solutions which is appreciated by both the parties through third party intervention. The main motive of Lok Adalats is to settle the disputes through the process of conciliation.

After the amendment in 2002, under section 22B the provision has been incorporated to set up permanent Lok Adalats for the purpose of pre litigation mechanism for settlement and conciliation of cases which are concerned with the public utility services. The permanent Lok Adalats consists of a chairman and the other two members. The chairperson must be rank of district judge and additional judge or the person who is higher the rank of district judge. The public utility services includes the services concerning with electricity, water, telephone and communication health services and postal services.

4. Legal Aid- Issues and Challenges in Modern India

It is rightly said that without darkness there is no value of sunshine. Prosperity and poverty are interrelated and latter should not be considered as cursed rather be endured. In India majority population lives in villages and most of them live hand to mouth existence, for them survival is more important than knowledge, awareness of their rights and duties.

We the people of India [11] have made social justice an inalienable claim for legal literacy and fundamental rights, however painful the hostile forces may be. Other than poverty, illiteracy, failure of executive in effective playing its role in implementing welfare policies are major road blocks to legal aid services. It is therefore solemn duty of Legal Service Authority to ensure legal aid to poor.

Supreme Court Legal Service Committee has provided guidelines to provide legal aid to poor free of cost and middle income group at reasonable cost. However if women and children approaches the Legal Aid Authority or Committee then they must be provided such aid without question of financial position.

4.1 Tools to Tackle

Human resource are very vital for legal aid. The skill and competence of lawyers, judges, and clerical staffs should be improved and updated. Latest technology like computers and other communication facilities should be facilitated. Most importantly all persons involved must co- ordinate properly. Corporate sector and NGO's must participate in this activity and lethargic and red- tapism should be eradicated. 'Also voluntary organizations and social action groups engaged in legal aid program must be encouraged and supported by the state'.

The Central Authority also known as NLSA must take measures to spread legal awareness and educate the weaker sections of society about their rights, benefits and privileges guaranteed by social welfare legislation.

The need of hour is innovative and effective policies which can increase the utility of the legal aid policy. Various State Legal Authority have done commendable and plausible job as effectively applying the legal aid with innovative techniques.

4.2 Several instances of State Legal Service Authority are- Haryana

Haryana State Legal Service Authority has permanent and continuous Lok Adalats established which enable public to take their disputes at pre- litigative stage to Lok Adalats for possible amicable settlement.

Counselling and conciliation Centres- This provides a forum to parties to express their views freely without any legal constraint. If such mediation is successful then parties are referred to Lok Adalat for recording their statements and pass award according and these decree have value of Civil Court.

Accreditation to NGO's and Social Action Groups- The authority provides Accreditation to genuine and authentic NGO's and Social Action Groups which work in field of Legal Literacy/ Legal Awareness/ Para Legal Activities etc. They also get grant from the NLSA for the required goal.

4.3 Delhi

Delhi is the capital of India and has a cosmopolitan character and it is expected from Delhi to be role model for other State Legal Service Authority. Even here new methods and tactics has been applied to get better results.

Permanent Legal Services Clinic- This clinic is manned by retired Judges, Bureaucrats, and eminent social personalities. The doors to justice are open 24*7 and the trained officials provide aid and advice even through phone.

Mobile Legal Service Clinic- The clinic vans visit various part of Delhi like slum areas, industrial areas, unauthorised colonies, college, schools etc and assisted by expert and well trained officials. They provide Legal Aid and counselling to target class as well create awareness of legal rights and remedies [12].

5. Recommendations

The suggestive measures in this field are Alternative Dispute Resolutions (ADR's) like Arbitration, Negotiation, Mediation, and Conciliation these can be effective legal tool and provide inexpensive justice to the masses. Lok Adalats are the bed rock of legal service authorities and largely used to help the overburdened judiciary.

Adequate Financial Support- Juridicare programs cannot succeed without sufficient resources and funding. The funds allotted at present is not sufficient for such important scheme and substantial allocation of funds should be made to make the

functioning of NALSA more effective.

No compromise on quality- The quality must be maintained. The lawyers in the panel should be experienced. Law Ministry should come with policy that senior lawyers must deal at least 10 cases free of cost in a year.

Performance Appraisal by all Legal Aid Authorities- Here each District Legal Aid Service Authority should be compared and analysed with other District Legal Aid Service Authority, inter as well as intra states to encourage Legal Aid. State Authorities also can take similar steps in this regard by filing PIL for the benefit of public at large [13].

Law Schools-The Law colleges, Universities must have free Legal Aid clinic which be manned by law students and through which the students can provide basic legal aid and advice to local people. Also legal academicians who with their knowledge and experience should play an active role in implementation of legal aid.

6. Conclusion

"The concept of seeking justice cannot be equated with the value of dollars. Money plays no role in seeking justice."

Justice Blackmun in *Jackson v. Bish* [14]

Legal Aid is obligation on the state and not charity. It is very important that all legal functionaries should work actively, so as to achieve the Constitutional pledge in letter and spirit. One must ensure equal justice for all. However it is sad that even after more than 60 years of Independence the downtrodden and weaker sections of the society feel handicapped in pursuit of Justice and should be major concern for those who are engaged in justice delivery system.

The strategy should be such that even the weakest sections of the society living in remotest part of India should not feel that he suffered injustice. Priority should be given to women, Children, persons in custody and backwards of society who need special legal aid to evolve. Despite all the odds and obstacles we can hope that different legal authority should become potent force which will achieve the desired goal and dream of the founding father of Constitution of India and the people with whom are wielded powers of the sovereign power of the state. Legal awareness will definitely create confidence among them and will enable them to conscience use of law as an instrument of safeguarding the interest of the masses.

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Adoption of good faith in English contract law

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Abstract
Good faith in English Contract Law has been prioritized to protect the consumers. However, the aspect of the consideration of good faith in the English Contract law has remained contentious and debatable in the broader aspect of business to business negotiation and other commercial contracts (Cheyne & Taylor, 2001).

Keywords: Good faith, negotiation, trasanction

1. Introduction
The English Contract Law today has been able to develop sequence of approaches which aimed at dealing with the behavior of the parties in times of negotiation as behavior bearing on the creation and context of the Contract. This notion has impacted the pre-contractual agreement directly, as most of the necessities of good faith that is being used in negotiations and dealings might not be feasible if the same documents have not been secured for the contract validity (Clarke, 1993) [3]. Since the previous years, former judges have also required to give consideration on good faith into the English Contract law as the government aspect which can be sued to all dealings and contracts. However, such notions have failed to attain such, and some other reforms.

Accordingly, good faith has been regarded as an essential aspect in the system of the Civil Law which runs through the whole Law of Obligations (Beatson & Friedmann, 2002) [1]. The goal of this paper is to analyze the significance of Good Faith in English Contract Law. It will also discuss whether it is important to adopt a general duty to negotiate in good faith.

2. Discussion and Analysis
2.1 Good Faith
In the US Uniform Commercial Code, the lawmakers have been able to generate the good faith concept as an eminent and overriding aspect. This has been done by expressively using fifty out of 400 sections and implies such with many other parts. For instance, from Section 1 to Section 203 of the mentioned code, it has been stated that each duty or contract with such Act implies a responsibility of good faith in terms of enforcement and performance. In this Code, good faith has been referred to as honesty in the context of conducting a transaction or honesty in the conduct of any transaction. Nonetheless, and for all its purposes and intentions, such has been stated by the lawyers from the USA which has trivial meaning than the contextual and procedural fairness that is the nonexistence of dishonesty and fraud, misinterpretation among others.

The American Restatement (Second) of Contracts has also considered a broader context in good faith. For instance, they have defined bad faith as paragraph 205 of the ARSC which includes the evasion of the bargaining spirit, the absence and inadequate diligence as well as slacking off, providing insufficient performance, the authority to specific conditions, interference with other involved stakeholder's performance or failure in cooperation

An ongoing debate has been focused on the appropriateness to comprehend good faith as a goal standard and not merely become a mindset as a subject of the contractual involved parties. Some scholars who are referred to as the Communitarians have an argument in line with the judges that considers community standards of decency and fairness in terms of the contractual bargains (Mason, 2000) [7], in which other object have been regarded as dangerous in the business cycle. However, this argument has been found to be more confusing. In the English Law it is a big factor on knowing when a contractual condition which operates in the market becomes unfair (Stewart, 1998) [12]. If such term has not been successful, it should be terminated from the application in the market and the courts have their ways of protecting the customers from these unworkable items, by considering highly recognized approaches of using other conditions as well as creating a contract that would generate effectiveness of the business.

In order to ensure these, Good Faith has been regarded as a principle which guides the formulation and implementation of contracts among different provisions and laws. It also guide the hyperactivity of the American merchants and the existing liberal behavior that comply with the court's jurisprudences narrowed and streamlined down to its significance for the Contract of law to the concept known subjective rule which indicates a "good faith purchase". This was a situation which gives consideration on the purchase of properties or the business title and was efficiently expressed on early 18th century, in the *Lawson v. Weston* case, as the empty head and pure heart context, it can be claimed that all the manners of the English Contract law is mostly in consistent with fairness. Accordingly, the English Courts may not be considered as adequate as it should be in accordance with the consideration, the imbalance of the gross in its obligation should still be considered as well (Clarke, 1993) [3].

The conceptual lineage and history of English Contract law can be realized on post-Benthamite Utilitarianism. It has been regarded by Atiyah-an English Scholar who has been stressed out by the neo liberalism concept of Hayek. In view of this, it is considered that if good faith needs a substantial evaluation

and examination rather than being procedural, can this be regarded as a simple part of the general concept from the free market, in consideration of the mirage of social justice (Steyn, 1991) [10]. In order to become fair, the English scholar has rejected the extreme perception that substantial fairness is not possible to attain. Nonetheless, since Atiyah strongly perceives that conceptual fairness, in which the English Contract Law has a strong commitment which results to have a relative fairness. The dogma and policy of consideration, although significantly diverse in function and its nature than the dogma of good faith, has been considered in the English Contract Law, which is also essential aspect of objective good faith.

The consideration must be of some value and not entirely insulting and cynical, and this should not be immoral and illegal. In a later paper, it has been regarded that such formalistic aspect, considered in New Zealand Court has been overemphasized by a better concept of majority of the juries who considers that one of the critical roles of contract law is to provide effective approach for contractual dealings based on achieving sensible and rational expectations and needs of the involved parties. Also there is not a place of different objectives between the rational expectation of the involved parties and the needs of god faith (Steyn, 1997) [11]. The context of the obligation to give consideration to good faith in considering contractual dealings is integrally offensive and repulsive in terms of the adversarial condition of the parties when conducting a negotiation. Herein, each of the party involved has given the chance to show their interest and concerns, as long as such person does not commit misinterpretations in the court.

The obligation considers negotiation through good faith has been recognized to be irrelevant both in practice and frameworks. This has been consequently inconsistent in its dogma as part of the negotiating team in line with the case under Lord Ackner such as *Walford v Miles.* Different opinions, even positive or negative ones, have been concerned with the dogma of the good faith and the feasibility of highlighting the policy and aspect into English Contract Law. Therefore, as mentioned in Peel (2007) [8], in spite of the idea that the aspect of good faith has been improved in different legal systems all over the world, lawyers, still do not consider ideas and contexts that a specific body should act as well as work in good faith.

The dogma of good faith is a universal situation or circumstances of enforceability of a negotiation which indicates that both parties have moved in good faith. For instance, it has been explained that the policy of good faith as well as fair transactions and negotiations noted that in practicing the obligations and accountabilities, each of the involved entities must act with regard to fair negotiation and good faith as well as they should not consider or they should restrict the given responsibility. Hence, good faith in the conduct and enforcement of negotiations as a highly recognized concept are being considered in various legal systems which include the English Contract Law.

2.2 Adoption of Good Faith in English Contract Law

As regarded above, the principal objective of this is to analyze and discuss the policy and dogma of good faith as being adopted and not be dismissed by the English Contract law, to make it more capable in enforcing the laws and rules in binding contract. With this concept, the case of *Stiletto Visual Programmes Ltd v Interfoto Picture Library* must be regarded as reference. In this case, the complainant has hired forty seven photographs to the Offender. These photographs were sent with a note and were put in a jiffy bag. The note composed of nine terms which include clause that provided that a cost of £5.00/transparency/daily should be paid if said items were kept for more than fourteen days. However, the Offender has not used said items and forgot about it. In this case, the complainant has sued the Offender.

It has been asserted that in some civil law structures and approach, and perhaps in majority of the legal system external to the common law. Under the provision of responsibilities and the provision of the overarching principles, both parties should consider and act in good faith when enter into contract (Quillen, 1988) [9]. This do not merely means that the parties must not trick or misinform one another; the effect could be most pertinently implied by the symbolical context of fair playing, being clean or relaying one's cards to face upward.

The principle of good faith should be fair and open in negotiations and transaction. It has also been mentioned that the English Contract law has been able to consider piecemeal resolutions as a reply to illustrate the issues and conflicts of unfairness instead of entrusting and obligating itself to no such superseding and intervening policy and regulations. In this case however, the court has rejected the second condition, while the defendant declined and denied in paying the obligation. Thus, the jury has ruled favoring the complainant. In this respect, it can be interpreted in the concept of market-individualism in which consumer have perceived that the concept of good faith has been unlimited and open ended healthy policy or principle (Cole, 1994) [4].

On one hand, *British Telecommunications plc v Timeload Ltd* could be described as the case in which irrespective and good faith in the negotiation, definitely come near on such technique. In this case, nonetheless, the determination of its closeness should be delegated or represented by this aspect in to the English Contract Law and the distances of the courts in accepting this principle. This can be respondent with *Walford v Miles*, in which in line with the closeness of the principle to be represented shows that unless the confrontational and accusatorial ethics of the English Contract Law has been neglected and with the notion that it is not that distant. For some instances, the case of *Marks and Spencer plc v Baird Textile Holding Limited* have shown that eagerness and court's promptness to be extended by the embedment of good faith. In this regard, the Court of Appeal give consideration on the behaviour and conduct from classical individualistic ideologies as well as the opposing arguments Bair in terms of the cooperative type and description of the formers connection and affiliation with Marks & Spencer. Thus, even to such aspect, that is, good faith is noticeable; the unique as well as distinctive doctrinal concept is visible.

Nevertheless, the feasibility of adopting good faith by covertness may be considered by the pressures that have been established by such adoption. Those pressures includes the world of the civil and the common law, which has been authoritative in viewing that good faith negotiations has been the basis of other system in the concept of contract law (MacMillan, 2003) [6]. In addition, most of the legal systems of other nations that have been unified because of the EU have also give consideration to good faith doctrine among negotiations and contracts. This has been considered in two

directives which include the Unfair Terms in Consumer Contracts and Commercial Agents. The first is considered unfair if as opposed to the needs and demands of the aspect of good faith, leading to a significance imbalance with rights and responsibilities of both entities that arise under such contract which may lead to the loss and disadvantage of the consumers. On the other hand, Commercial Agents directives are regarded as the dutiful act and the act of good faith to the interest of both parties. With these directives, the context of Good Faith has become a familiar concept. In addition, it is also logical to note that the English Contract law as exerted by its doctrine and because of the pressures faced has accepted it. Nonetheless, it can also be essential to consider that lawyers can state that the use of good faith as generic guidelines would be considerable.

In addition, in the case of *First National Bank v Director General of Fair Trading*, the condition in a typical and usual aspect of loan dealings enabled bank to raise additional payments as well as interest in which the loaner defaulted on its repayment and consider deal in paying their debt via installment with a longer period. Accordingly, Regulation 3(2) (b) states that the negotiations and agreements which are relevant to the competence and acceptability of remuneration should also be tested in line with fairness. Consequently, the term as far as the House of Lords are concerned, was fair enough, however, the Lordships have regarded that the good faith indicates fair and open negotiations. In the same manner, Steyn have warned that any decently, morally and essentially processed in terms of interpretation of the needs in good faith must not be included.

In this regard, the context of good faith in English Contract Law should be given enough consideration. The cynical and doubtful view has given five adverse and unconstructive arguments against the adoption of the general doctrine of good faith in English Contract law. The first is that, a principle of good faith when it requires both entities in considering the legitimacy of the expectations and interests of each other, cuts against the significantly individualist ethic that is under the concept of English contract law.

For instance, in the case given above such as *Walford v Miles*, it has been stated that considering the needs for good faith would be incompatible with the accusatorial ethics that underpins English Contract Law. On the second aspect, it can be noted that the concept of good faith, assumes a set of moral standards in opposed as to which the contractors are being judged, however it was not clearly stated whose or which morality should be considered. As relevant to the second aspect, the third concern notes that the principle of good faith would lead to having different inquiries and questions into the state of minds of the contractors. The next is that good faith has the capability of controlling matters of aspects that consider the remedial concept while eliminating the authority and power of the negotiating entities. If the aspect of good faith has indicated unspecified choice integrated with the notion that such aspect gives challenge on the authority of the negotiating entities then there exists a clearer concept that individuals should be skeptical.

It is essential to consider that the advantage and disadvantages of the arguments on considering good faith and also relies on which framework and model of good faith should be suitable for a specific case or situation. There are three frameworks of good faith, according to Fried (1981) [5], which an individual should comprehend before allowing positive or negative arguments. The first one is that requirement of good faith that generates on the aspect of having a fair dealing that are already existing in a particular terms and conditions of such negotiation. The next is the good faith that behaves on the aspect of fair negotiations that are directed by a crucial cooperative morality. The difference between the first two good faith models is that the latter do not have the capability of tracking determined standards, on a contrary, it attempt to generate the market in a more rational subscribing the rules of cooperation. The last one is what is known as the visceral justice by Michael Bridge. Herein, the judges response in an impressionistic manner to the merits of the conditions and complete the cases on time, all in the sense of good faith. This model is also considered with judicial license.

3. Conclusion

With the discussed cases and the analysis, the principle of good faith in negotiation should be adopted by English Contract Law. Different sample cases have shown the usefulness of considering the good faith. However, there are still arguments and debates about this principle. In this regard, the courts should be able to set a precedent regarding this matter. Although, the principle of good faith may not be recognizable and in some cases, might not be applicable, it does not affect the set of a good standard in English Contract Law. Hence, the aspect to deal as well as negotiate using good faith is capable of implementation and application only as obligatory negotiation. In this respect, it should be expected that the English Law should consider the use of good faith as one of the essential and mandatory requirements.

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Dishonour of cheque: An overview

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Abstract
The present day economies of the world which are functioning beyond the international boundaries are relying to a very great extent on the mechanism of the negotiable instruments such as cheques and bank drafts and also the oriental bill of exchange prevalent in India, known as 'hundis'. Since cheque plays an important role in business transaction, dishonour of cheque threatens the credibility in transacting business through cheque. Thus, the object of bringing section 138 on statute appears to be, to inculcate faith in the efficacy of banking operations and credibility in transacting business on Negotiable Instruments.

Keywords: cheque, negotiable instrument, dishonour of cheque, drawer, drawee

1. Introduction

The cheque system in India is of British parentage. It is common knowledge that the London Goldsmiths were the first bankers in England and the system of payment of cash through cheques dates back to 17th century [1]. Gradually, the cheque became widely and popularly accepted as negotiable instrument in settlement of trade and commerce transactions. Advent of cheques in the market has given a new dimension to the commercial and corporate world. Its time when people have preferred to carry and execute a small piece of paper called cheque than carrying the currency worth the value of cheque.

Dealings in cheques are vital not only for banking purposes but also for the commerce and industry and the economy of the country. Rhetorically therefore a truncated cheque system is injurious to the economic health of the country as the system of cheques is a matter, a subject that concerns everybody whether he is a man on the street, a layman, a business magnate, an industrialist, a banker or a member of bench or bar.

One of the biggest problems, which we are facing in the smooth functioning of the cheque system, is Dishonour of cheques, which threatens the credibility of this negotiable instrument. The problem is becoming bigger with the passage of time. It is hindering smooth business transactions. The great hardship is caused to a person if a cheque issued in his favour is dishonoured due to insufficiency of funds in the account of the drawer of the cheque. To discourage this, the dishonour of certain cheques has been made an offence by an amendment of the Negotiable Instruments Act, 1881 by the Banking Public Financial Institutions and Negotiable Instrument Laws (Amendment) Act, 1988. After this amendment, a new chapter consisting of section 138 to 142 has been inserted in the Negotiable Instruments Act, 1881 [2].

Prior to the year 1988, the act of dishonour of cheque was treated as an offence under Indian Penal Code. Other remedy was to file a suit for recovery which was civil in nature and was dilatory. To ensure promptitude in remedy against defaulters and to ensure credibility of the holders of the negotiable instrument a criminal remedy of penalty was inserted in Negotiable Instruments Act, 1881.

Section 138 of Negotiable Instruments Act, 1881

A negotiable instrument is lifeblood of commerce and to ensure this concept section 138 of Negotiable Instrument Act, 1881 was enacted. This section deals with the dishonour of cheques as a result of insufficiency of funds in the account of a drawer [3]. The Act does not define the offence contemplated under section 138. It is a special offence not covered by the Indian Penal Code. However, the Act describes precisely the nature and conditions precedent for constituting an offence within the meaning of Section 138.

Section 138 provides that- "Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

a) The cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier;
b) The payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
c) The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation

For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability" [4]

The title of the Chapter XVII makes it clear that dishonour of every cheque will not bring the case within the purview of

Section 138 and a person can be held liable only if the cheque has been issued in discharge of, in whole or in part, of any legally enforceable debt or liability. This section draws presumption that one commits the offence if he issues the cheque dishonestly. It aims of not only protecting the interests of the genuine drawers of the cheques with a view to give them a final opportunity to make payments in respect of dishonoured cheques, but also imposing punishments on the guilty [5].

Ingredients of the Offence

To constitute an offence under Section 138 of the Negotiable Instruments Act the following ingredients are required to be fulfilled:

1) Cheque should have been issued for the discharge, in whole or in part, of any debt or liability.
2) The cheque should have been presented within the period of three months or within the period of its validity, whichever is earlier.
3) The payee or the holder in due course should have issued a notice in writing to the drawer within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.
4) After the receipt of the said notice by the payee or the holder in due course, the drawer should have failed to pay the cheque amount within fifteen days of the receipt of the said notice.
5) On non-payment by the drawer, the complaint should have been filed within one month from the date of expiry of the grace time of fifteen days, before a Metropolitan Magistrate or not below the rank of a Judicial Magistrate of the first class.

i) Issuance of Cheque for Discharge of any Debt or Other Liability:

It is essential that the dishonoured cheque should have been issued in discharge, wholly or partly, of any debt or other liability of the drawer to the payee. The expression 'debt or other liability' means a legally enforceable debt or other liability. If a cheque is given by way of gift or present and it is dishonoured by the bank, the maker of the cheque is not liable for prosecution [6].

In *Maruti Udyog Ltd Vs Narender* [7], the Supreme Court held that by virtue of Section 139 of the Negotiable Instruments Act, the court has to presume that the holder of the cheque received the cheque for discharge of a debt or liability until the contrary is proved.

In *Tamil Nadu Retrenched Census Employees Association Vs K Thennan* [8], it was held that arrears of legal fee of an advocate can be classified as legally enforceable debt and complaint under section 138 cannot be quashed.

ii) Presentation of Cheque

Legally a cheque can be presented for payment repeatedly any number of times within three months from the date of drawing of the cheque or within the period of its validity which is earlier.

In *K C Nadar Vs Chenabal M R Simon* [9] the question was raised for the first time before the court whether a cheque may be presented on any number of times during the period of its validity. This was the case which propounded the basic theory that a cheque can be presented any number of times during the period if its validity. Further, the Supreme Court held in *Sadanandan Bhadran Vs Madhvan Sunil Kumar* [10] that section 138 of the Act does not put any embargo upon the payee to successively present a dishonest cheque during the period of its validity and a fresh right arises with every presentation but cause of action arises only once when the notice is served.

iii) Reasons for Dishonour of Cheque

a) Stop Payment

In *Electronics Trade and technology development Corporation India Vs Indian Technologies and Engineers (Electronics) Pvt. Ltd*. [11] The Supreme court of India observed that if, before presentation of a cheque, notice is issued by the drawer to the payee or holder in due course not to present the cheque for payment, and it is still presented and, on the drawer's instructions, dishonoured, Section 138 is not attracted. But in another case *Modi cements Ltd. Vs Kuchil Kumar Nandi* [12], the Supreme Court disapproved its own observations in earlier case and held that even if a cheque is dishonoured because of "Stop Payment" instruction to the bank, section 138 would get attracted. It was further affirmed in *M/s M. M. T. C. Ltd. Vs M/s Medchl Chemicals and Pharma (P) Ltd*. [13]

b) Bank Account Closed

The dishonour of cheque on the ground that the account has been closed by the drawer of the cheque constitutes an offence under section 138. "Account Closed" would mean that "though the account was in operation when the cheque was issued, subsequently the account is closed [14]. It shows that the drawer has no intention to make payment. Closing of account is one of the modes by which a drawer can render his account inadequate to honour the cheque issued by him, therefore, the closing of the account would not enable the accused to wriggle out of his liability under section 138 of the Act [15]. In *N. A. Issac Vs Jeeman P. Abraham & Anr* [16], it was held that cheque issued when account has already been closed, provision of Section 138 will apply.

c) Refer to the Drawer

"Refer to drawer" in the ordinary meaning amount to a statement of a bank, "we are not paying, go back to the drawer and ask why", or else "go back to the drawer and ask him to pay". The remarks "refer to drawer" necessarily means, as per banking custom, that the cheque has been returned for want of funds in the account of the drawer of the cheque. It is a courteous way normally adopted by a bank to show its inability to honour the cheque for want of funds [17].

In *M/s Electronic Trade & Technology Development Corporation Ltd. Vs M/s Indian Technologist and Engineer (Electronic) Pvt. Ltd*. [18] It was held that if cheque is returned with endorsement 'Refer to drawer' or Instructions for stoppage of payment or exceeds arrangement, it amounts to dishonour of cheque.

d) Post Paid Cheques

A "post dated" cheque is a bill of exchange when it is written or drawn, it becomes a 'cheque' when it is payable on demand [19]. A post-dated cheque cannot be presented before the bank and as such question of its return does not arise. It is only when the post dated cheque becomes a cheque with effect from the date shown on the face of the said cheque, Section 138 comes into play.

iv) Notice

Notice is a very important stage. It is the non-payment of dishonoured cheque within fifteen days from the receipt of the notice that constitutes an offence. Issuing of a cheque and its dishonour is not an offence. The offence is when the drawer receives a notice from the payee and he fails to pay the dishonoured cheque amount within the grace period of 15 days that constitute an offence any demand made after the dishonour of cheque will constitute a notice.

The requirement of giving of notice is mandatory. The main problem is the serving of the notice to the accused as accused makes all efforts to avoid the receipt of the notice. In order to deal with such situations, the courts have evolved a principle called as deemed service of a notice under section 138(b). The legal position regarding deemed service of a notice U/s 138(b) has been that whenever a notice is sent by the payee to the drawer of the cheque and the said notice is refused to be taken or the addressee deliberately avoids its service, there is deemed to be service of the same [20].

v) Filing of Complaint

A fair reading of Section 138 of the Act together with its proviso will make it clear the cause of action for initiating proceedings would complete when the drawer of the cheque fails to make the payment within fifteen days of receipt of the notice. The offence would be deemed to have been committed only from the date when the notice period expired [21]. A complaint under section 138 is to be filed within one month of the date on which the cause of action arises. The day on which cause of action occurs is to be excluded for reckoning the period of limitation for filing a complaint U/s 138 of the Act [22].

vi) Jurisdiction

Hon'ble Apex Court in case of *K. Bhaskaran vs. Shankara* [23], had given jurisdiction to initiate the prosecution at any of the following places.

1. Where cheque is drawn.
2. Where payment had to be made.
3. Where cheque is presented for payment
4. Where cheque is dishonoured.
5. Where notice is served upto drawer.

However, in its recent decision in *Dashrath Rupsingh Rathod v. State of Maharashtra & Anr*. [24], the Supreme court held that in cases of dishonour of cheque, only those courts within whose territorial limits the drawee bank is situated would have the jurisdiction to try the case.

Subsequently, many people had raised difficulties about this judgment. This is so because the payee of the cheque had to file the case at the place where the drawer of the cheque has a bank account. However, now the legal position has completely changed with above new Ordinance, i.e., the Negotiable Instruments (Amendment) Ordinance, 2015, which has been promulgated by the President on 15 June 2015, and which has immediately come into force with effect from 15 June 2015. The above Supreme Court judgment is now of no consequence since this Ordinance supersedes it, clarifying jurisdiction related issues for filing cases of offence committed under Sec 138.The main amendment included in this is the stipulation that the offence of rejection/return of cheque u/s 138 of NI Act will be enquired into and tried only by a Court within whose local jurisdiction the bank branch of the payee, where the payee presents the cheque for payment is situated [25].

The jurisdiction of filing cheque dishonour cases under Section 138 of the N.I. Act is now changed by the above Ordinance as under:

- Now a cheque bouncing case can be filed only in the court at the place where the bank in which the payee has account is located.
- Secondly, once a cheque bounce case has been filed in one particular court at a place in this manner, subsequently if there is any other cheque of the same party (drawer) which has also bounced, then all such subsequent cheque bounce cases against the same drawer will also have to filed in the same court (even if the payee present them in some bank in some other city or area). This will ensure that the drawer of cheques is not harassed by filing multiple cheque bounce cases at different locations. So, even multiple cheque bounce cases against the same party can be filed only in one court even if payee presents the cheques in different banks at different locations.
- Thirdly, all cheque bounce cases which are pending as on 15 June 2015 in different courts in India, will be transferred to the court which has jurisdiction to try such case in the manner mentioned above, i.e., such pending cases will be transferred to the court which has jurisdiction over the place where the bank of the payee is located. If there are multiple cheque bounce cases pending between the same parties as on 15 June 2015, then all such multiple cases will be transferred to the court where the first case has jurisdiction as per above principle.

Thus, this new Ordinance now introduces some clarity and uniformity in the matter of cheque dishonour cases. This Ordinance takes care of the interests of the payee of the cheque while at the same time also taking care that the drawer of the multiple cheques is not harassed by filing multiple litigations at different locations to harass him (if more than one cheque has bounced). This Ordinance supersedes the Supreme Court decision dated 1 August 2014 [*Dashrath Rupsingh Rathod v. State of Maharashtra*, (2014) 9 SCC 129] or any other judgment / decision of any court (Supreme Court or High Courts) on this issue [26].

vii) Punishment

Bouncing of a cheque invites criminal prosecution under section 138 of the Negotiable Instruments Act, 1881. Punishment for the offence under Section 138 of NI Act is imprisonment up to two years or fine which may extend to twice the cheque amount or both. The offence is bailable, compoundable and non-cognizable.

viii) Civil Action

The payee may also initiate money recovery procedure in a jurisdictional civil court apart from prosecuting the drawer for criminal offence.

Conclusion

Bounced cheques are one of the most common offences plaguing the financing world. According to the Supreme Court, there are over 40 lakhs such pending cases in the country. Although, there have been a few amendments in the Act which has made the Act, a self contained statute, wherein provisions have been made to check the delays and to ensure speedy justice with more deterrent punishment, yet the problem of

cheque bouncing is not decreasing. Moreover, the law is unnecessarily complicated and there is lack of provisions for forcing the appearance of the accused in the court. Though the amendments to the Negotiable Instruments Act, 1881 are helpful in dealing with the offence of bouncing of cheque, they are not fully proved successful in stopping the offence.

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Protection of good Samaritans: A study in the light of Supreme Court's decision in save life foundation case

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Abstract
Good Samaritans have the fear of legal consequences, involvement in litigation and repeated visits to police station. There is urgent need to tackle these issues. There is need to establish legal framework so that Good Samaritan is empowered to act without any fear of adverse consequences or harassment. Save life must be the top priority. This research paper discuss the rights and protection of good Samratians which has decided by supreme court in case of save life foundation.

Keywords: good samaritans, bystanders, golden hour, right to life

1. Introduction

Whenever we open a newspaper we come across news of road accidents and the number of deaths caused. Not only this while travelling on a road we come across road accident incidences too and we do pray or hope the victims to be fine. But if we are a witness to such accident and find a victim in such situation, we do get into the dilemma of whether to help out the victim or not. We will rather find someone to help such victim or call an ambulance and police. By doing such we free ourselves from the burden by putting it on Police and the ambulance personal. And why so, why we can't drop such victim to a hospital or try some first aid treatments? The answer to this question is that we just don't want to get involve into the procedural hassle.

So many accidental deaths are caused because of getting delayed treatments. The bystanders are scared to help because they know that they will be detained at the hospital for long, then there will be police inquiry and they will have to attend court trials as witness. Many of the good Samaritans have to go through these hassles. This doesn't sound encouraging to others who wish to help.

Now there's good news for all those who do really wish to help such victims. An NGO called Save Life Foundation by their efforts and concern filed a PIL for the purpose of protecting the good Samaritans. For that the victims get timely help so that their lives could be saved. [Landmark judgment *Save life Foundation & Anrv. Union of India & Anr*. dated March 30, 2016].

The petitioner 'Save Life Foundation', a non-profit, non-governmental organization filed petition under Article 32 of the Constitution of India in public interest for the development of supportive legal framework to protect Samaritans i.e., bystanders and passers-by who render the help to the victims of road accidents. The petitioner aimed to create a unique network of medical responders to come to the victim's aid. The petitioner also drafted recommendations to address the critical deficiencies in the Motor Vehicles Act and other laws governing road safety.

The petitioner contended that the Department of Road Transport was responsible for framing motor vehicle legislation and evolving road safety standards in India. The WHO in its 'World Report on Road Traffic Injury Prevention, 2004' has projected that by 2020, road accidents will be one of the biggest killers in India. People are hesitant to render immediate help to the road accident victims. The victims lay wounded on the road for some time till the arrival of police. Delay rendering medical help in such cases sometimes is fatal. Good Samaritans have the fear of legal consequences, involvement in litigation and repeated visits to police station. There is urgent need to tackle these issues. There is need to establish legal framework so that Good Samaritan is empowered to act without any fear of adverse consequences or harassment. Save life must be the top priority.

Accident cases require fastest care and rescue which could be provided by those closest to the scene of the accident. Bystanders' clear support is essential to enhance the chances of survival of victim in the 'Golden Hour' i.e., the first hour of the injury. As per the WHO India Recommendations, 50% of the victims die in the first 15 minutes due to serious cardiovascular or nervous system injuries and the rest can be saved through by providing basic life support during the 'Golden Hour'.

Right to life is enshrined under Article 21 which includes right to safety of persons while travelling on the road and the immediate medical assistance as a necessary corollary is required to be provided and also adequate legal protection and prevention from harassment to good Samaritans.

The people have the notion that touching the body could lend them liable for police interrogation. Passerby plays safe and chose to wait for the police to arrive whereas injured gradually bleeds to death.

The Court observed: "It remains undisputed before us that it is not insufficiency of law but it is implementation of law which is a matter of concern. Different guidelines including guidelines for ambulance Code, emergency care and appropriate directions to the hospitals on the highways for handling the accident trauma patients, as a top priority are stated to have been issued. And it constituted a Committee consisting of 8 members to submit the suggestions."

2. Standard Operating Procedure

The Central Government issued the following standard operating procedure, namely:

1. The Good Samaritan shall be treated respectfully and without any discrimination on the grounds of gender, religion, nationality, caste or any other grounds.

2. Any person who makes a phone call to the Police Control Room or Police Station to give information about any accidental injury or death, except an eyewitness may not reveal personal details such as full name, address, phone number etc.
3. Any police official, on arrival at the scene, shall not compel the Good Samaritan to disclose his/her name, identity, address and other such details in the Record Form or Log Register.
4. Any police official or any other person shall not force any Good Samaritan who helps an injured person to become a witness in the matter. The option of becoming a witness in the matter shall solely rest with the Good Samaritan.
5. The concerned police official(s) shall allow the Good Samaritan to leave after having informed the police about an injured person on the road, and no further questions shall be asked if the Good Samaritan does not desire to be a witness in the matter.

3. Examination of Good Samaritan by the Police

i) In case a Good Samaritan so chooses to be a witness, he shall be examined with utmost care and respect and without any discrimination on the grounds of gender, religion, nationality, caste or any other grounds.
ii) In case a Good Samaritan chooses to be a witness, his examination by the investigating officer shall, as far as possible, be conducted at a time and place of his convenience such as his place of residence or business, and the investigation officer shall be dressed in plain clothes, unless the Good Samaritan chooses to visit the police station.
iii) Where the examination of the Good Samaritan is not possible to be conducted at a time and place of his convenience and the Good Samaritan is required by the Investigation Officer to visit the police station, the reasons for the same shall be recorded by such officer in writing.
iv) In case a Good Samaritan so chooses to visit the Police Station, he shall be examined in a single examination in a reasonable and time-bound manner, without causing any undue delay.
v) In case the Good Samaritan speaks a language other than the language of the Investigating Officer or the local language of the respective jurisdiction, the Investigating Officer shall arrange for an interpreter.
vi) Where a Good Samaritan declares himself to be an eye-witness, he shall be allowed to give his evidence on affidavit, in accordance with section 296 of the Code of Criminal Procedure, 1973 (2 of 1974) which refers to Evidence in Formal Character on Affidavit.
vii) The complete statement or affidavit of such Good Samaritan shall be recorded by the Police official while conducting the investigation in a single examination.
viii) In case the attendance of the Good Samaritan cannot be procured without delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, or his examination is unable to take place at a time and place of his convenience, the Court of Magistrate may appoint a commission for the examination of the Good Samaritan in accordance with section 284 of the Code of Criminal Procedure, 1973 (2 of 1974) on an application by the concerned.

The Superintendent of Police or Deputy Commissioner of Police or any other Police official of corresponding seniority heading the Police force of a District, as the case may be, shall be responsible to ensure that all the above mentioned procedures are implemented throughout their respective jurisdictions with immediate effect.

The Court modified para 2(vii) as: "The affidavit of Good Samaritan if filed, shall be treated as complete statement by the Police official while conducting the investigation. In case statement is to be recorded, complete statement shall be recorded in a single examination." and approved remaining guidelines.

It also directs that the court should not normally insist on appearance of Good Samaritans as that causes delay, expensesand inconvenience. The concerned court should exercise the power to appoint the Commission for examination of Good Samaritans in accordance with the provisions contained in section 284 of the Code of Criminal Procedure, 1973 *suomotu* or on an application moved for that purpose, unless for the reasons to be recorded personal presence of Good Samaritan in court is considered necessary.

However, it clarified that guidelines in relation to protection of a Good Samaritan are without prejudice to the liability of the driver of a motor vehicle involved in a road accident as specified under section 134 of the Motor Vehicles Act, 1988.

By allowing the petition the court recorded that guidelines be approved and be enforced as binding till appropriate legislative provisions are made. And directed that the scheme framed by the Central Government and the order be widely published through electronic media and print media for the benefit of public so that public is made aware and that serves as impetus to good Samaritans to extend timely help and protection conferred upon them without incurring the risk of harassment.

Well if these instructions are followed with heart by the citizens then many lives will be saved. It is said that saving life of someone is the biggest good deed of all. No donation is as priceless as giving or saving someone's life.

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The economic and financial crimes commission and its role in curbing corruption in Nigeria: Evaluating the success story so far

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Abstract
As part of the efforts to combat corruption in Nigeria, the Economic and Financial Crimes Commission was one of the institutions put in place to fight the menace. It has very wide powers to fight corruption, and financial crimes. This paper discusses the activities of the Commission in the war against corruption, financial and economic crimes. Though the Commission recorded appreciable achievements in combating economic and financial crimes, some factors that militated against its success were equally identified and appraised. The paper concludes that major albatross encountered by the Commission in the performance of its functions lies not in the legal instruments with which to work, but the will-power, weak implementation and enforcement machinery by the Commission.

Keywords: economic crimes, financial crimes, commission, corruption, Nigeria

Introduction

There is a plethora of anti-corruption institutions in Nigeria before the establishment of the Economic and Financial Crimes Commission [1]. These institutions include the Legislature, the Judiciary, the Police, Code of Conduct Bureau, Standard Organisation of Nigeria, Budget Monitoring and Price Intelligence Unit, *etc.* [2]

The financial industry is enmeshed in issues such as electronic fraud and deployment of funds for illegitimate activities [3]. Nigeria is losing over 200 billion dollars per year as a result of corruption and financial crimes [4]. Money laundering, for instance, has reached an alarming rate with private and public service officials indicted in the practice [5]. Many government officials have been caught in the process of trafficking money. Often times, such officials are politicians, a status they exploit to escape justice [6]. Billions of Naira is being lost by the Federal Government everyday due to the activities of illegal oil bunkerers [7] and trade malpractices [8]. The indulgence of some Nigerians in Advance Fee Fraud has destroyed the reputation and credibility of the country all over the world. This has made it unnecessarily difficult for majority of innocent Nigerians to transact business both locally and internationally [9].

In the address of former President of the Federal Republic of Nigeria, Olusegun Obasanjo while signing the Anti-Corruption Bill on the 13th of June, 2000, observed *inter-alia:*

Corruption has been responsible for the instability of successive governments since the first republic. Every coup since then has been in the name of stamping out the disease called corruption. Unfortunately, they often turn out to be worse than the disease. And Nigeria has been the worse for it. Nigeria's external image took a serious bashing as our beloved country began to feature on top of every corruption index… We must tackle it head-on for our country to make any meaningful economic progress. With corruption, there can be no sustainable development, nor political stability [10].

It is because of the prevalence of corruption and financial crimes in Nigeria that necessitated the establishment of the Economic and Financial Crimes Commission (hereinafter referred to as "the EFCC") on the 13th day of December, 2002. This paper shall examine the establishment, functions of the Economic and Financial Crimes. It shall equally evaluate the activities of the anti-corruption Body, asses the impediments to the effective realisation of the objectives of the Commission as well as the achievement of the Body so far.

Establishment of the Economic and Financial Crimes Commission

The Economic and Financial Crimes Commission was established on the 13th of December, 2002 after the Bill enacting the Commission was passed by the Senate and the House of Representatives had been authenticated by Ibrahim Salim, the then Clerk of the National Assembly [11].

The Economic and Financial Crimes Commission act, 2002 was repealed by the Economic and Financial Crimes Commission (Establishment) Act, 2004. The Act makes the Economic and Financial Crimes Commission a body corporate with perpetual succession and a common seal. This implies that the Commission can sue and be sued in its corporate name and hold or dispose of properties [12].

Functions of the Economic and Financial Crimes Commission

The functions of the Economic and Financial Crimes Commission as contained in sections 6 and 7 of the Economic and Financial Crimes Commission Act include the investigation of all financial crimes, coordination and enforcement of all economic and financial crimes laws [13], the adoption of measures to identify, trace, freeze, confiscate or seize proceeds derived from terrorist activities, economic and financial crimes related offences, the adoption of measures to eradicate the commission of economic and financial crimes, the examination and investigation of all reported cases of

economic and financial crimes, dealing with matters connected with the extradition, deportation and mutual legal or other assistance between Nigeria and any other country involving economic and financial crimes and carrying out and sustaining public and enlightenment campaign against economic and financial crimes within and outside Nigeria [14].

The Enforcement Strategies of the Economic and Financial Crimes Commission.

According to Ribadu [15], the Commission's enforcement strategies since inception include: investigation, arrest and detention of suspects, arraignment and prosecution of suspects, confiscation and seizure of properties, freezing of accounts and deportation of accused persons [16]. Individuals and organisations can file complaints through a written petition to the EFCC, which will then initiate investigation if the case falls within the power of the EFCC. The Public Enlightenment Unit of the Commission is charged with the responsibility of sensitising members of the public about the danger of economic and financial crimes in Nigeria in order to reduce its incidence [17]. Prosecution of cases by the Commission is done by contracting them out to private legal practitioners on behalf of the Commission.

Activities of the Economic and Financial Crimes Commission

The Commission is presently investigating high-profile Nigerians involved in economic and financial crimes. The Commission is investigating how Sambo Dasuki, Musibau Obanikoro (former Minister of State for Defence) and Governor Ayo Fayose of Ekiti State removed N4.6 billion from the account of the office of the National Security Adviser between 4th and 13th April, 2014 [18], the sharing of ₦23 billion by the former Minister of Finance, Mrs. Nenadi Usona among North-Eastern States at the instance of former Petroleum Minister, Mrs. Diezani Alison-Madueke for the prosecution of the 2015 presidential election [19] and the tracing of $40 million to Ex-President Jonathan's Cousin, Roberts Azibaola, to a bank in London. The cash was wired through Citibank N.A Canada Aquare, Canary in Wharf London into the account of Plus Holdings Nigeria Limited of Azibaola [20].

Olisah Metuh, former Publicity Secretary, who is standing trial before the Federal High Court, Abuja at the instance of the Economic and Financial Crimes Commission has shown his readiness to refund the sum of ₦400 million fraudulently collected from the office of the National Security Adviser for the re-election of former President Jonathan [21].

The EFCC equally arraigned former Chief of Air Staff, Air Marshall Dikko Umar at the Federal High Court, Abuja on alleged money laundering, criminal breach of trust and corruption involving ₦7.382 billion [22]. The suit filed against the former chief of General Staff, Alex Badeh by the EFCC, revealed how he bought properties in Abuja for his three children at the sum of ₦970 million [23]. The former Minister of Aviation, Femi Fani-Kayode was arraigned at the Federal High Court, Abuja for withdrawing the sum of ₦2.5 billion illegally from the Central Bank of Nigeria and paid into the accounts of six members of the Peoples' Democratic Party and the Goodluck Support Group. It was alleged that Fani-Kayode got about ₦840 million from the fund [24].

Sambo Dasuki, former National Security Adviser is at the centre of massive investigation into the alleged misappropriation of about $2.1 billion meant for the procurement of arms to fight Boko Haram insurgency in Nigeria [25]. In 2015, the EFCC filed a 13 count charge of false assets declaration against the Senate President, Dr. Bukola Saraki, at the Code of Conduct Tribunal (CCT). He was alleged to have corruptly acquired many properties while in office as Governor of Kwara State, but failed to declare some of them in the forms earlier filed and submitted to the Code of Conduct Bureau. He was equally accused of making an anticipatory declaration of assets upon his assumption of office as Governor which he later acquired [26].

Constraints of the EFCC in the Performance of its Duties of Prosecuting

Apart from prosecuting suspects, EFCC is equally charged with supervising, controlling and coordinating all activities relating to the investigation of offences relating to economic and financial crimes [27]. In the course of performing these functions, the EFCC encountered many challenges. The Challenges include:

(a) Selective Prosecution

Many Nigerians are accusing EFCC of partiality in its operation. They believe that the Commission is selective. For instance, Kupolati once accused the Commission of selective operation during the time of President Obasanjo [28]. The story of selective prosecution is the same under the present administration of President Buhari [29].

(b) Plea Bargaining

Plea bargaining is arrived at through negotiations between the prosecutor and the defence during which a possible resolution of the charges against the accused person is reached [30]. It is very sad to observe that the execution of plea bargaining in Nigeria allows criminals to escape punishment. In an address to the 5th Annual General Conference of the Nigerian Bar Association in Abuja in 2011, the then Chief Justice of Nigeria, Dahiru Musdapher condemned the practice of plea bargaining when he said that the plea has no place in Nigerian law but invented to provide soft-landing for treasury looters [31]. The application of plea bargaining in the Pension Fraud involving one John Yusuf shows that plea bargaining is a fraud. In the said case, John Yusuf, a former Police Pension Fund Chief was sentenced to a term of two years in prison or an option of a fine of N750,000.00. In the said agreement, the convict pleaded guilty to the charge against him. He opted for the option of fine [32].

(c) The Presiding Judge

Ordinarily, the trial judge is expected to dispense justice without fear or favour. He holds the balance between the prosecution and the defence, he is expected to decide cases before him impartially and whether the prosecution has discharged the burden of proof as prescribed by law [33]. Some courts have been tainted by allegations of corruption or succumbing to political influence. Ayo Salami, retired president, Court of Appeal publicly accused Katsina-Alu (CJN as he then was) of trying to put pressure on him to decide an electoral petition in favour of the Peoples' Democratic Party [34] In 2007, Peter Odili, former Governor of Rivers State secured a judgment at the Federal High Court restraining the EFCC from investigating the finances of his Government [35]. With regard

to Lucky Igbinedion, the former Governor of Edo-State, he reached a plea bargain agreement with the EFCC concerning various counts of money laundering amounting to about $25 million. The trial judge was accused of deviating from the terms of agreement by sentencing Igbinedion to ridiculous sum of 3.5 million fine. Igbinedion paid the fine immediately. The fact that he had the money on him gave room for suspicion that he knew what the judgment was going to be [36].

Under the EFCC Act, courts are to treat the cases filed by the EFCC expeditiously [37]. The Chief Judges of the Federal High Court, High Court of the Federal Capital Territory, Abuja and State High Court are enjoined to designate courts and judges to hear matters filed by the Commission. The congestion of the cases in our conventional courts, inadequate judicial officers and recording proceedings in long-hand are seriously affecting expeditious hearing of cases filed by the EFCC.

(d) Political Interference

The Chairman of the EFCC stays in office at the pleasure of the president [38]. The EFCC presented a list of about 135 people who should not run for office during President Obasanjo's regime in 2007. The list contained the names of the perceived enemies of the president [39]. Aondoakaa was accused of interfering with the cases prosecuted by the EFCC when he was Attorney-General of the Federation [40]. He was accused of destroying cases relating to corrupt State Governors by discontinuing most of the cases [41]. After an order of the court freezing $35 billion of Ibori assets in 2007 [42], Aondoakaa provided Ibori's counsel with a letter indicating that Ibori had been investigated in Nigeria and no charges had been filed against him. The letter made the court in the United Kingdom to defreeze Ibori's assets [43].

(e) Allegations of Corruption.

Larmode, the former Chairman of EFCC, admitted that corruption is traceable to the Commission. He said that those he was supposed to send out to carry out the Commission's mandate on certain individuals are themselves enmeshed in corruption [44]. Recently, the Commission arrested one of its operatives, Mohammed Biu, a Deputy Superintendent, for collecting $150,000 from some military officers being investigated by the Commission [45]. The Federal Government has also set up a panel to probe EFCC and ICPC. The panel was mandated to investigate high-profile corruption cases allegedly compromised by the EFCC and ICPC [46].

(f) The Challenge of Immunity.

Section 308 of the 1999 Constitution as amended provided for executive immunities for President, Vice President, Governor and Deputy Governor of a State. In *Fawehinmi v I.G.P.* [47], Oguntade, J.C.A (as he then was) observed that:

The simple and ordinary meaning of section 308(1) of the Constitution, 1999 is that the person to which that provision applies could not be made to face civil or criminal proceedings in court [48].

The court has held that public officials can be investigated while in office, for the purpose of filing a criminal charge against them after leaving office [49]. It is doubtful whether such investigation can be thorough because the President, Vice-president, Governors and their deputies cannot be arrested for the purpose of taking their statements [50]. Some of the prosecution witnesses may not be readily available after the completion of their tenure. Former Governor Dariye of Plateau State relied on the provision of section 308 of the Constitution to frustrate his prosecution while in office [51].

Cases Prosecuted by the EFCC

The EFCC has arraigned some nationally prominent public office holders on corruption charges. Many of these corruption cases have made little progress in courts and those convicted have faced relatively little or no prison term. Other public office holders who have been widely implicated of corruption have not been prosecuted [52]. Some of the nationally prominent public office holders prosecuted by EFCC are hereunder discussed:

(a) EFCC and Bode George

Bode George was arraigned with Aminu Dabo, Captain Abidoye and Zama Maidaribe for allegedly awarding contracts valued N100 billion without due process during his tenure as the Chairman of the Nigerian Ports Authority [53]. George was convicted on October 26, 2009 [54]. The conviction of Bode George was, however, set aside by the Supreme Court for failure to prove the charge against him [55]. The effect of this acquittal is that Bode George has no criminal record [56]. The case also revealed the slow pace of our criminal justice system. George was sentenced to two and a half years imprisonment in 2009 and he had completed the term before the case was finally put to rest in 2013. Unfortunately, he cannot sue for compensation or damages in the absence of malice on the part of the prosecution [57].

(b) EFCC and Lucky Igbinedion

Lucky Iginedion was arraigned at the High Court of Enugu for money laundering funds totaling N4 billion when he was Governor of Edo State [58]. The 147-Count charge preferred against him included fraudulent embezzlement, stealing and use of several corporate companies as conduit pipes to siphon several billions of Naira from the state. He pleaded guilty to all the counts in the charge sheet. He was subsequently convicted and fined N3.5 million following his plea of guilty, which came as a result of plea bargain between him and the EFCC.

(c) EFCC and DiepreyeAlamieseigha

Alamieseigha was Governor of Bayelsa State between 1999 and 2005. In September 2005, he was arrested by British Authorities in London. The London Metropolitan Police found about £1 million in cash at his home and charged him with money laundering. After being admitted to bail, he managed to flee the United Kingdom. The EFCC said he disguised as a woman and re-appeared in Bayelsa Sate, claiming he had been transported there by God. As a sitting Governor, he enjoyed immunity from prosecution in Nigeria, but four months later, he was impeached by the State Legislature and the EFCC charged him with embezzling about $55 million [59].

In July, 2007, he pleaded guilty to failing to declare his assets, his front companies were convicted of money laundering and the court ordered his assets seized. He was sentenced to two years imprisonment and released, for time served, the day after his sentencing [60].

(d) EFCC and TafaBalogun

Tafa Balogun was the first nationally prominent public office holder in Nigeria to be convicted by the EFCC. He was

arraigned for failing to declare his assets and his companies were convicted of eight count charge of money laundering. He was sentenced to six months imprisonment and the court ordered the seizure of his assets reportedly worth in excess of $150 million [61].

(e) EFCC and Cecilia Ibru

Ibru was arraigned on a 25-count charge of corrupt practices in office [62]. The EFCC accused her of granting a credit facility in the sum of 20 million US Dollars to Waves Project Limited which was actually above her credit approval limit. She was equally accused of approving the granting of a credit facility in the sum of N2 billion to Petosan Farm Limited without adequate security as laid down by the regulation of Oceanic Bank [63]. Ibru was convicted on the 8th of October, 2010 and sentenced to six months imprisonment [64]. She also forfeited properties and assets valued N191 billion [65].

(f) EFCC and Others

In *FRN v Amadi* [66], the accused was involved in the offence of attempt to obtain money by false pretences [67], forgery and uttering [68]. He was convicted and sentenced to imprisonment without an option of fine. In the *Federal Republic of Nigeria v Nwakagbu and Others* [69], the accused persons were tried on a two-count charge of conspiracy to vandalise Nigerian Petroleum Corporation Pipeline [70]. They were convicted and sentenced to life imprisonment.

Most of the judgments delivered in respect of cases involving public office holders were through plea bargain. It has been argued that the procedure has made nonsense of our criminal justice system [71]. It was argued that Plea bargaining does not necessarily mean remorsefulness on the part of the accused person compared to pleading guilty under the Criminal Procedure Act. It simply encourages an accused to plead guilty and thereby enjoy some benefits from his outlawed behaviour [72].

In all the cases mentioned above, sentences imposed by courts were just too light compared with the gravity of the offence committed. For instance, Tafa Balogun who embezzled public funds of about N10 billion got just six months imprisonment. Alamieseigha was sentenced to two years imprisonment and released for time served, the day after his sentencing, Cecilia Ibru who stole about N191 billion was sentenced to six months imprisonment [73].

Prevention and Control of Financial Crimes by EFCC

There are so many provisions of the EFCC Act and other laws that empower the Commission to investigate and prosecute offences committed by any person, corporate bodies under the EFCC Act or any other law relating to financial crimes [74]. To ensure adequate prevention and control of financial crimes, the EFCC Act empowers the Commission to be the coordinating agency for the enforcement of the provisions of the Money Laundering Act, Failed Banks (Recovery of Debts) and Financial Malpractices Act, Banks and Other Financial Institution Act, Miscellaneous Offences Act, Provisions of Criminal Code and Penal Code and any other law or regulation relating to economic and financial crimes [75].

For the purpose of enabling the Commission to discharge its duty of preventing financial crimes and coordinating the enforcement of the laws relating to financial crimes, the various heads of regulatory bodies in the financial industry are automatic members of the Commission. The bodies are Nigerian Deposit Insurance Corporation, Security and Exchange Commission and Central Bank of Nigeria. The Commission can easily and adequately get information concerning any deposit or transfer and suspicious transaction from these financial institutions [76].

As a result of flow of information, the EFCC was able to prosecute about 239 money laundering cases, resulting in 12 convictions in 2005 [77]. In 2006, the EFCC investigated about 950 suspicious transaction cases involving about N450 billion from local banks [78]. *Zero Tolerance* published that an estimate of $500 billion is laundered annually worldwide and out of this figure, an estimated ten percent is traceable to Nigeria [79].

The activities of the EFCC also extend to Advance Fee Fraud [80]. The Commission mounts surveillance on the activities of fraudsters as a result of the influence of Information and Communication Technology (ICT) [81]. According to Ribadu, the internet enables the criminals to reach a greater number of potential victims more quickly and sometimes without being traced [82]. At the International level, the Commission maintains a working relationship with the International Police (INTERPOL), the Financial Action Task Force (FATF) of the G8 [83], the UK Metropolitan Police, Federal Bureau of Investigation (FBI), Canadian Police and the Scorpion of South Africa.

EFCC and International Community

The EFCC was established in 2002 due to International pressure to address pervasive economic and financial crimes in Nigeria. Countries like the United States, United Kingdom and the European Union provided substantial assistance in technical support and capacity building to the Commission. Between 2006 and 2010, the European Union, being the largest donor to the Commission provided US $235 million of assistance to the Commission [84]. Foreign law enforcement agencies such as the US Federal Bureau of Investigation and London Metropolitan Police assisted in training key EFCC investigators [85].

The United Kingdom prosecuted some Nigerian officials for money laundering. The Metropolitan Police service brought money laundering charges against former Governors Dariye, Alameiseigha and Ibori. One of the associates of Dariye was sentenced to three years imprisonment for laundering more than €1.4 million of public funds stolen by Dariye by an English Court [86]. In 2007, a court in the United Kingdom froze Ibori's assets worth $35 million. In May 2011, Ibori was extradited from Dubai to London over allegations of stealing $292 million in the State Funds [87]. In 2011, the US Department of Justice sought a court order to seize $1 million US property of former Bayelsa Governor, Alameiseigha [88].

Achievements of EFCC

The EFCC has recorded success in the areas of investigation, arrest and prosecution of prominent Nigerians. The EFCC successfully investigated and prosecuted Lucky Igbinedion [89], Diepreye Alameiseigha [90], Cecilia Ibru [91], Joshua Dariye [92], Jolly Nyame [93] and other prominent political public office holders were also charged.

The EFCC did well in recovering various huge sums of money looted by corrupt public Nigerians. According to Oguche [94], the EFCC recovered money and assets derived from crime worth over $700 million, £3 million pounds from British

Government between 2003 and 2004. EFCC also refunded the sum of $4.48 million to an 86 year old Hong Kong woman, Julianah Ching being money recovered from advance fee fraud investigation. The Commission recovered N100 billion assets from Ex-Governors [95] and N55 million bribes in 2005 from Committee Members of the National Assembly given as bribe to lobby for increase in education budget [96]. The Commission secured the return of about N50 million from the British Metropolitan Police as proceeds of corruption recovered from Dariye's girlfriend [97].

The EFCC also enjoys cooperation and collaboration with Federal Bureau of Investigation, the UK's Office of Fair Trading (OFT) and Metropolitan Police. The Commission has recorded success in changing the negative image of Nigeria in the international sphere. As a result of this, Nigeria was made a member of Egmont Group of Financial Intelligence Units in 2007 [98].

Another notable achievement of the EFCC is the establishment of its Training Institute in Abuja and Zonal Offices in strategic cities around the country [99].

Conclusion

When you fight corruption, it fights back [100], the meaning of this is that war against corruption in Nigeria is a difficult task. The EFCC has not successfully attacked corruption because of lack of political will to fight corruption on the part of the Government. The EFCC is not free from the whims and caprices of the President and they are not properly funded. The institutions that are expected to assist the EFCC in fighting Corruption are themselves corrupt. The Police, the Judiciary, the Legislature and the EFCC are corrupt. There is nothing wrong with the EFCC Act. It is conceded that it is not possible to have a perfect law or institution [101]. The problem is enforcement.

Recommendations

In view of the conclusion reached above, the following recommendations are offered in order to strenghten the EFCC in combatting corruption in Nigeria.

It is urgently necessary to improve the legislative framework for combatting corruption in Nigeria. We must make necessary amendment to all laws designed to combat corruption, particularly the EFCC Act in order to make their enforcement more efficient and effective. The EFCC Act should be amended to create the offence of living above one's income. The Act should also be amended so as to make the Commission independent both politically and financially with the assurance of security of tenure of office for official of the Commission.

The EFCC Act should be amended by allowing the Chief Justice of Nigeria, the President of the Senate, the Speaker of the House of Representatives, the President of the Nigerian Bar Association, President of the Nigerian Labour Congress and Representatives of two non-government organisations to jointly appoint the Chairman of the EFCC. They should also be responsible for the removal if there is any reason warranting the removal of the Chairman before the expiration of his tenure. The Commission must also receive its fund from the Federation Account directly and not from the Presidency.

The idea that the EFCC chairman should be a law enforcement or security agency official should be discarded. The EFCC Act requires that the Commission's Chairman should be a serving or retired member of any government security or law enforcement agency not below the rank of assistant Commissioner of Police or equivalent [102]. The requirement should be removed and replaced with criteria focused solely on integrity, experience and ability. Ordinarily, it is good to appoint a career law enforcement official as EFCC chairman but corruption has tarnished the image of the police and it is very difficult to identify senior officers who are untainted by any such allegations [103]. The Government should as a matter of paramount importance, appoint qualified people of integrity to the position of EFCC Chairman whether they have a law enforcement background or not.

It is equally necessary to put in place the necessary machinery that will remove or reduce all the hindrances facing the EFCC. For instance, corruption and financial crimes are very complex to detect. Therefore, investigators must be trained in order to be effective [104]. EFCC must also engage the services of competent counsel to handle their cases. Those who are involved in corrupt practices are ready to secure the services of the best lawyer available in order to escape conviction. Ricky Tarfa said that a defence counsel has to take advantage of anything that might benefit his clients [105].

The EFCC must be well funded. Investigation and prosecution of corruption cases require enough money. Training and re-training of investigators require money, the Commission needs money to engage the services of competent prosecuting counsel. The former Chairman of the EFCC, Larmode lamented that lack of fund was hindering the work of the Commission [106].

It will be difficult for the EFCC to fight corruption if the Commission itself is corrupt. The Commission must set an example of institutional transparency by requiring all their officials to publicly declare the total value of their assets. Clarion calls are being made by well-meaning Nigerians that the EFCC Boss and the Director of State Security Service should be relieved of their positions because of corruption allegations leveled against them. If the assertion is correct, it will be honourable for the leadership of the institutions to throw in the towel and resign to pave way for a non-corrupt official.

It is also necessary to reform the plea bargaining process in Nigeria. From the Tafa Balogun, Igbinedion and the Yusuf's cases the pattern of granting ridiculously lenient sentence had been entrenched. A legal framework to regulate the role of the prosecuting counsel, defence counsel and the judges involved must be put in place. Where a person found guilty of an offence is sentenced to pay a fine, the amount of the fine should not be less than the amount involved in the case [107].

The executive must stop the idea of interfering in the work of the EFCC. The power of the Attorney General of the Federation as a member of Government to interfere in anti-corruption cases must be reduced by amending section 174 of the Constitution which gives the Attorney –General power to take over any criminal prosecution.

The Constitution should be amended by making the exercise of the power of the Attorney-General to enter a *nolle prosequi* a subject of judicial review.

The court should be allowed to determine whether or not the exercise of the power is corruptly done. Therefore, section 174 of the Constitution that gives Attorney-General the power to take over or discontinue a criminal matter should be amended to include a subsection (4) to wit:

The power of the Attorney-General to discontinue a criminal matter pursuant to section 174(1) (c) shall be a subject of judicial review.

Unfortunately, the Supreme Court decided otherwise in *State v Ilori* [108]. The Supreme Court has now ruled that it can overrule its own previous decisions [109]. In view of the abuse of the exercise of power of *nolle prosequi* by the Attorney-General, both at the Federal and State levels, the Supreme Court should overrule itself in *State v Ilori* and adopt the decisions of the Court of Appeal where the Court held that the Attorney-General's power to enter a *nolle prosequi* could be questioned in a court of law [110].

The role of the EFCC in stamping out corruption will be meaningless if the immunity clause contained in section 308 of the Constitution of Nigeria, 1999 is not removed. If this immunity clause is completely removed or removed in corruption cases, the public office holders concerned will no longer have legal backing for looting Government treasuries [111]. Prominent Nigerians like Late Yar'Adua [112], David Mark [113] and former Chief Justice of Nigeria, Alfa Belgore supported the removal of the immunity clause [114].

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28. Kupolati T. Crisis of Constitutional Impeachment of Governor Fayose as a Case Study, in Olatunbosun, I.A (ed.) *Legal Issues For Contemplating Justice in Nigeria. Essays in Honour of Hon. M.O. Onalaja.* Ile-Ife, *Department of Jurisprudence and Private Law, Faculty of Law, O.A.U.*, 2004, P.69
29. The Peoples' Democratic Party (PDP) has accused President Buhari of pursuing a selective anti-corruption agenda, with its chieftains as targets. Mordi, R. (2016) "Is Buhari's Anti-Corruption War Selective?" *The Nation,* p.33.
30. Ferguson G, Roberts D. Plea Bargaining: Directions for Canadian Reforms, 52 *Canadian Bar Review*, P.497 at 501. The EFCC was the first prosecuting body to introduce plea bargaining with the aim of achieving asset recovery. This was noticed in some high profile prosecutions where the accused persons were allowed to enter the plea of guilty, forfeit part of the asset and sentenced to light imprisonment. For detailed study, see Akande I.F. *et.al* (2013) "The Fight Against Corruption in Nigeria: The Imperative of Criminal Justice System Reforms". In Abdulqadir, I.A. *et.al.(* eds.) *Corruption and National Development: Proceedings of the 46th Annual Conference of the Association of Law Teachers,* p.3` at 48; Alubo, A.O. *et.al* (2013) Plea-Bargain Mechanism in the Judicial Determination of Corruption Cases: A Critical Inter-Jurisdictional Assessment" in Abdulqadir, I.A *et.al* (eds.) Corruption and National Development: Proceedings of the 46th Annual Conference of the Nigerian Association of Law Teachers, 1974; p.235.
31. Adesomoju A. CJN Condemns Plea-Bargain, *The Punch,* 16th November, p.1. Plea bargaining was first observed in Nigeria in 2000 when the then Speaker of the House of Representatives, Salisu Buhari Pleaded guilty to the offence of perjury and forgery and was sentenced to N2,000.00 fine- *C.O.P v Salisu Buhari (2000)* FWLR (pt 1) P.164. See also, Odedube, N. and Makinde, F. (2007) "Plea Bargain is Corruption- Bola Ajibola" *The Punch,* 5th August, p.2; Kalu, A.U. (2012) "The Role of Plea Bargaining in Modern Criminal Law." Ani, C.C (2012) "Plea Bargaining: Immunity From Punishment". A paper presented at a Roundtable on Plea Bargaining organized by NIALS at the Supreme Court Complex, Abuja, 2011.
32. Bulus J. Police Pension Fraud: A Chronology of Plea Bargaining Compromises, 2013. Available online at http://vanguardngr.com accessed on 27th of March, 2013. The cases of Tafa Balogun, Cecilia Ibru and Igbinedion were concluded through the use of plea bargaining with light sentences.
33. The standard of proof required in criminal trial is "proof beyond reasonable doubt". See section 135(1) of the Evidence Act, Cap. E14, LFN, 2011. See also, the cases of *Ijeoma v. State* (1990) 6 NWLR (pt. 158) P.567 and *Aruna v State* (1990) 6 NWLR (pt. 155) P.125.
34. Soniyi Tobi, Salami, Katsina-Alu Face-Off Deepens. *This Day*, P.2.
35. Ekeinde A. Ex-governor of Nigerian Oil State Escapes Arrest *Reuters*, March 5, P.1.
36. In 2011, the EFCC filed new charges against Igbinedion. But on the 15th of May, 2011, the Federal High Court dismissed the case, ruling that the new charges would amount top double jeopardy. See Okala, Z. (2011) "Federal High Court Discharges Lucky Igbinedion of Corruption Charges" *The Nation*, 16th May, P.1. See also, section 36 (9) of the 1999 Constitution. In Ibori's case, the Federal High Court dismissed all the counts against him without allowing the prosecution to present any of its evidence at trial. See *FRN v Ibori* Charge No. PHC/ASB/IC/09
37. Section 19 (2) (b) and (c) of the Act.
38. Section (3) (2) of the EFCC provides that a member of the Commission may be removed at anytime if the President is satisfied that it is not in the interest of the Commission that such a member should remain in office.
39. Chibueze J. Editorial Opinion, The Nation, Friday, March 16, 2007 under the title "Election or Selection", 2007.
40. Michael Aondoakaa was Attorney-General and Minister for Justice in Yar'Adua administration from July, 2007 to February, 2010.
41. Ribadu made the statement in United Kingdom when he was testifying against former Governor of Delta State, James Ibori in a money laundering case on the 25th of August, 2009. See *Human Rights Watch* of August, 2011 at P.29
42. Estelle Shirbon. Britain Freezes Assets of Nigerian Ex-Governor, Reuters, 2011, P.2,
43. Emman Anya, Misikilu Mojeed. Attorney-General's Letter sets Ibori Free. *The Punch*, 4th of October, at P.3. For a detailed discussion on the Albatross of Ibori, see Babatunde I.O (2010) "Extradition in International Law; The Ibori's Conundrum" *University of Ado-Ekiti Law Journal.* 2011; 4:266.
44. Omotoso F. EFCC still a Sleeping Giant, available online at http://www.nigerianewsworld.com/content/efcc-still-a-sleeping-giant. Accessed on Thursday 15th of May, 2013.
45. Fadimu S. Commission Arrests Own Operative for Collecting N45 million Bribe from Military Officers Under Probe. *The Nation* Saturday, 2016, P.4
46. Adesomoju A. FG Raises Panel to Probe EFCC, ICPC, *The Punch*, 2001, P.2
47. (2000) FWLR (pt. 12) P.2015
48. See also, *Tinubu v I.M.B Securities (2001)* FWLR (pt.77) P.1003, Daud, K.A. (2010) "To retain or to Remove? The Jurisprudence of the Immunity Clause in the 1999 Constitution of the Federal Republic of Nigeria" *EBSU Journal of International Law and Juridical Review*, P.380 at 389.
49. *Fawehinmi v IGP, Ibid.*
50. Daud, K.A *Ibid.*
51. *EFCC v Dariye (2005) NSCC, P.4. See also, AGF v Atiku*(2007) 8 NWLR (pt. 1035) P.117. See further, Ikpeze N (2013) "Fusion of Anti-Corruption Agencies in Nigeria: A critical Appraisal" NALT 46th Annual Conference Proceedings Unilorin 2013 at p.17
52. Adeniran, D. (2010) "CACOL Demands Quick Dispensation of Justice in the Following cases".*The Nation*, March 28, pages 64-65
53. Ketefe, K. "Alleged N100bn Fraud: EFCC Lists 13 Witnesses Against Bode George" available online at http://www.nairaland.com/nigeria/topic/59547.0.html/. Visited on 25/9/2010.
54. Temple, C.V "The Conviction of Chief Bode George Might as well Be Only Symbolic (Pictorial)" available at

http://www.pointblanknews.com/artopn1920.html. Accessed on 25/9/2010

55. *George v FRN* (2013) LPELR, P.21895
56. The doctrine of *autrofois acquit* is in his favour. Under this doctrine, a previous acquittal is a bar to a subsequent trial for the same offence
57. If a person can prove malicious prosecution successfully, he will be entitled to damages. See Kodilinye, G. (1982) *The Nigerian Law of Torts*, Ibadan: Spectrum Books Limited, P.26
58. *FRN v Igbinedion.* Unreported Suit No. FHC/EN/CR/10/2008
59. BBC News online (2005) "Nigerian Governor to be Impeached" November, 25
60. Dulue, M (2007) "Former Nigerian State Governor Freed a Day After Corruption Conviction" *Association Press*, July 28, P.2. See also, Alubo A.O. *et.al* (2013) *op.cit* pp.259-260
61. Suit No FHC/ABJ/CR/14/2005: *FRN v Balogun*. Judgment delivered on the 22nd of November, 2005
62. Charge No. FHC/L/297c/2009
63. Failure to secure adequate security is an offence punishable under section 15 of the Failed Bank and Financial Malpractice in Bank Act, 2004.
64. Akkem, N and Tunde, O. (2010) "Cecilia Ibru Jailed. To lose N191 bn".*The Tribune* Saturday, 9th October, P.1
65. *Ibid.* Assets forfeited included 94 properties which comprised of about 22 in Lagos, 2 in Asaba, 2 in Abuja, 1 in Rivers State, 65 in Dubai, 2 in Maryland, USA and 191 different types of shares in unlisted companies in different banks. See also, Oguche, S. (2010) "An Appraisal of the Roles of the EFCC and ICPC in Combatting Corruption and Financial Crimes in Nigeria". *University of Jos Law Journal, Vol. 9, No.2, P.74.*
66. (2006) E.F.C.L.R, P.4
67. Contrary to sections 5(1), 8(b) and 1(3) of the Advance Fee Fraud, Cap. A6, LFN, 2004
68. Contrary to sections 467(2) and 468 of the Criminal Code, Cap. 77, LFN, 1990
69. (2006) 2 E.F.C.L.R p.80
70. Contrary to sections 10(6) and 3(19) of the Miscellaneous Offences Act, 2004. See also, FRN v Inyang (2006) 2 EFCLR, P.164, *FRN v Iwveze and Anor.* (2006) 1 EFCLR, P.197, *FRN v Ikpe and Anor*(2006) 2 EFCLR. P.1
71. Olatunbosun, I.A and Alayinde, Z.O (2010) "Plea Bargaining: A Mockery of Nigerian Criminal Justice System" in Ajetombi, D (ed.) *Law, Politics and Development: The Challenges of an Emerging Mega-City. Ikeja Nigerian Bar Association, P.109, particularly at P.117.*
72. *Ibid*
73. Ani, C.C (2012) "Plea Bargaining: Immunity From Punishment" Paper presented at a Roundtable on Plea Bargaining organised by Nigerian Institute of Advanced Legal Studies on the 19th of April.
74. Sections 7 (1) and 13 (12) of the EFCC Act
75. Section 2 (1) (b), (c) (ii), (f), (g) and (j) of the Act
76. See section 25 of the Money Laundering (Prohibition) Act, 2011
77. SEC Annual Report and Accounts, 2005.
78. *Zero Tolerance* (2007) EFCC News Magazine, April Edition, Vol 1, No.4, P.22
79. *Zero Tolerance* (2007) EFCC News Nigeria, October Edition, Vol. 2, No.1, P.36
80. Pauline, C.R (2004) "Advance Fee Scam in Country and Access Borders". International Conference paper on Cyber Crime presented at Australian Institute of Criminology, Melbourne.
81. *Ibid.*
82. Ribadu, N (2006) "Nigeria's Struggle with Corruption". Presentation made to the US Congregation House Committee on International Development, Washington DC.
83. The Financial Action Task Force on Money Laundering was set up in Paris in 1989 in response to the mounting international pressure against money laundering. The body came up with 40 recommendations. Nigeria was given up till December, 2002 to comply with the recommendations or face sanctions. In compliance, Nigeria enacted the Economic and Financial Crimes Commission Act of 2002
84. *Human Rights Watch* (2011) "Corruption on Trial? The Record of Nigeria's Economic and Financial Crimes Commission" August edition, P.2.
85. EU's assistance was part of the $32.2 million project that was implemented by the United Nations Office on Drugs and Crime (UNODC)
86. Estelle Shirbon (2007 "Court Convicts Nigerian Over Stolen Public Funds" *Reuters*, April 5, P.2
87. Ibukun, Y (2011) "Nigerian Ex-Governor Extradited to UK Over Allegations of stealing $292 million in State Funds" *Associated Press*, April 15, P.15. See generally, Babatunde, I.O (2010) "Extradition in International Law: The Ibori Conundrum" UNAD Law Journal, Vol. 4, PP. 266-285 particularly PP.271-273
88. US Department of Justice: Assistant Attorney-General LannyBruer of the Criminal Division spoke at Franz Hermann Memorial Lecture at the World Bank on the 25th of May, 2011
89. *Ibid.*
90. *ibid.*
91. *Ibid.*
92. *Ibid.*
93. *Nyame v FRN* (2003) FWLR (pt. 156 P.721
94. *Ibid.*
95. Obuah, E (2010) "Combating Corruption in a Failed State: The Nigerian Economic and Financial Crimes Commission (EFCC)" *Journal of Sustainable Development in Africa, Vol 12, No. 1 at p.45*
96. *Akije, C.* (2005) "Wabara, Osuji and Others Arraigned in Court" *This Day*, April 3rd, P.1
97. Obuah, E. *Op.CIt at P.45*
98. The Egmont Group, with headquarters in Toronto, Canada has over 106 members. It is an international network of FIUS that was formed in 1995 to promote the exchange of intelligence and enhance global co-operation in the fight against money laundering and terrorist financing.
99. Udombana, N.J (2007) "The Economic and Financial Crimes Commission Act 2004: Equipping the EFCC for a More Effective Role in Justice Administration". In Yusuf, F.A.O (ed.) *Issues in Justice Administration in Nigeria.* Essays in Honour of Honourable Justice S.M.A Belgore. Lagos; VDG International Limited, P.372
100. Ribadu, N (2007) "Fighting Corruption in Nigeria". *National Public*, Radio Morning Edition, April 4. Shortly

after the arrest of James Ibori, Ribadu was abruptly removed from office as EFCC Chairman in January, 2008, and consequently, the Police Affairs Commission demoted him by two ranks and the State Security forcibly removed him from the graduation ceremony at NIPSS, Kuru. See also, Eboh, C. (2008) "Nigerian Police Demote Former Anti-Graft Head" *Reuters*, August 6, P.1, Obateru, T "Drama at NIPSS – Ribadu Denied Graduation, Arrested" *Vanguard*, November 24 at P.1

101. Agbede, I.O (2003) " Political Corruption: The Limit of Law" In Ibidapo-Obe, A. *et. Al* (eds.) *Law, Justice and Good Governance. Faculty of Law, UNAD, P.233*
102. Section 2(a) (ii) of the EFCC Act.
103. Tafa Balogun, former Inspector General of Police was sentenced to six months imprisonment under Ribadu for financial crimes allegedly committed at a time when he was serving as Nigeria's Chief Law Enforcement Officer. Also, another former Inspector-General of Police, Mr. Rufus Ehindero is under investigation by the EFCC for mismanaging the Police fund at a time he was serving as Nigeria's Chief Law Enforcement Officer. Another former Inspector General of Police Muhammed Abubakar said that "Nigerian Public has lost even the slightest confidence in the ability of the Police to do anything good". See Scott Baidauff (2012) "Nigeria New Police Chief Vows to Crack Down on Corruption" *Christian Science Monitor, February, 14, P.1*
104. Holt, T. and Graves, D. (2007) " A Qualitative Analysis of Advance Fee Fraud Email Schemes" International Journal of Cyber Crime and Criminology, P.137. See also, Oriola, T. (2005) "Advance Fee Fraud on the Internet: Nigeria's Regulatory Response". *Computer, Law and Security Review, P.26*
105. *Human Right Watch* interview with Ricky Tarfa in Lagos on the 22nd of February, 2011.
106. Channels Television News of 15th November, 2013 at 8 P.M
107. Shittu, W. (2012) "Comparative Analysis of the Jurisprudence of Plea Bargain" available online at http://www.punchnig,com accessed on 16/8/ 2013
108. (1983) 1SCNLR, P.94
109. *Odi v Osafile (*1985) 1NWLR (pt1), P.17
110. The Court of Appeal in Ilori v the State declared that the power of the Attorney –General to enter a nolle prosqui is subject to section 191(3) of the 1979 Constitution requiring him to act in the public interest and in the interest of justice. But the Supreme Court disagreed. See generally, Sagay, I.E. (1988) *Legacy for Posterity: The Work of the Supreme Court (1980-1988)* Lagos: Nigerian Law Publication Limited, P.44
111. Ijalaye, D.A (2007) "Sovereign Immunity in International Law: D.S.P Alamieyeseigha Saga" *Ikeja Bar Review*, vol.1, P.6. To add salt into an injury, the Nigerian Upper Legislative Chambers are proposing a bill to further clothe the legislators with immunity thereby stretching the ambit of section 308 of the 1999 Constitution beyond the earlier immunity provided for the President, Vice-Presidents, Governors and their Deputies in Nigeria. If this is achieved, the catalytic effect is better imagined than experienced.
112. Adeniyi, S. (2008) "Yar'Adua backs Immunity Clause Removal" *The Punch*, Friday, January 25 at page 7.
113. David Mark "Immunity Clause Must Go" *The Punch*, Wednesday, January 30, 2007, P.7
114. Belgore S.M.A (2008) "Rule of Law and Democratic Governance in Nigeria: Challenges and Prospects" being a paper delivered at the Pre-Convocation Lecture at the University of Abuja reported by *The Nation* of Sunday, February 10 at P.8.

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Improve the legal status of the parties in the institute of appeal courts arbitrage of the Republic of Uzbekistan

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Abstract
In this article the author to control the economic decisions of the court proceedings court of appeal instance, one of its specific characteristics, in particular, the history of its development and other court instance difference, the legal status of the parties, rights and obligations associated with the legal and procedural aspects of the study and the relevant national legislation suggestions.

Keywords: court, the economic process, appeal, appeal protest

Introduction

Rights and freedoms, and to guarantee the legal protection of the human rights violations as a priority of reforms. Under market economy conditions, the economic relationship between the participants of the different types of legal relations and the settlement of disputes that may arise as a result of these issues of legal regulation of relations in the sphere of our attention to the first days of independence. Business structures, different types of enterprises and institutions, in general, the legal relationships between persons possible specialization of courts and special courts - courts have been established and they are assigned to the task of implementation of the resolution of disputes, access to justice confirmed. In this regard, the President of the Republic of Uzbekistan in the first said: "The democratic renewal of the country is one of the most important step is to strengthen the rule of law, protection of rights and interests aimed at the gradual democratization and liberalization of the judicial system. In a word, a law-governed state and nurturing legal awareness and awareness remains a crucial task for us" [1].

To appeal court decisions on the history of the emergence and development of the institution testifies to the appeal likely he or she is linked with the level of development of the state. According to E.A. Borisova appeal to every one of the people from the realities of life [2].

The first phase of the development of the state public institution in which the people of the court. He said an independent report of its activity. First, there is no central government in general, and then the power of the court to check the activities of their institutions through its weakness. That is why the court decision is not final form and there is no appeal.

The authority of the central state of continuous development and escalation of the court lost its independence, and has become a kind of state power. It should be noted that, during the state of development of this appeal were not available, but a decision on the complaint to the possibility of a correction by the court, the court's decision in the second, but the decision adopted by the court, was aimed at the cancellation of this decision.

Appealed control of the central government to subdue the people's court, or even in his hierarchy of submission of his institution, and that the lower courts to the higher level of strengthening the level of replacing the system of subordination of the courts could lead to leading.

According to V.R. Topildiev in ancient Rome to make a complaint on the decisions made by the state court did not, however, appeal to the decisions of the court-party destinations on the basis of the decision of the court, the legal effects and the action in the first mode or such motion or contact [3].

Ancient Roman Empire appealed only came into existence after the establishment of the empire. Prior to any decision of the master People's Court following the cancellation.

The highest official of the emperor of the Roman Empire to the highest state authorities of all types, including the judicial authorities of both together.

At the end of the third century, the Roman Empire instance the judicial system and the decisions of the lower courts are able to make the complaint to the higher court. Please consider a complaint on appeal (Latin appellare call), the process of reviewing the decision adopted the appeals process, was renamed.

According to many publications, from the right of appeal was in the French [4]. The concept of appeal in France is about to arise in the XIII century. During this period, an appellate judge from the personal character was used as an injustice to blame. The judge was to protect their own weapons in the hands of the decision. These rules and the protection of their rights with the weapons in the hands of the judge's fighting was established in 1270 by the appellate courts, determined by the Establishments de Saint Louis. In 1667 with the production of Ordonans not an appellate judge on the court decision on the claim. 1579 against the orders of the king, Henry III in order determined by the lack of any real decision [5].

In 1796 by the decisions of the courts of first instance and appeal in this instance it was the first attempt to consider. However, a lot of time to consider the content of the work without the establishment of two court decisions, and the courts of appeal as the second instance and the full year 1810 they formed.

To resolve disputes on November 20, 1991, the first legal document "On arbitration courts and the procedure for resolving disputes," the law. Although the law on September 2, the Supreme Council of the Republic of Uzbekistan and void in accordance with Decree No. 925-XII, however, to resolve disputes on a number of important rules. This law is "how to check the validity of the legal and the decision" to solve economic disputes in chapter XI of the provisions concerning the review of the decision. In particular, in accordance with Article 133 of this law, the decision of how to check the validity of legal and arbitration board consisting of three judges examine the validity of the legal and the decision of the arbitration court. These results indicate that the decision by a majority of votes. No decision of the investigating body to control the decisions of the courts of arbitration in the arbitration court by the chairman or his deputy.

Vice-Chairman of the Court of Arbitration decision may be reviewed by the chairman.

December 8, 1992, article 111 of the Constitution of the Republic of Uzbekistan in the commercial courts enshrined in the rules.

December 14, 2000, the new edition of the Republic of Uzbekistan "On Courts" as defined in section 3 of the Law courts jurisdiction, the appeal of Karakalpakstan, Tashkent city and regional courts is taken. According to Article 52 of this Act, the Judicial Board of the Supreme Economic Court of the Republic of Uzbekistan for the first instance and cassation procedure. In accordance with Article 57 of the Law on "The Economic Court of the Republic of Karakalpakstan, regional and Tashkent city court cases within its jurisdiction as a court of first instance and the appeal procedure."

The basic rules of appeal provided by the Economic Procedure Code of the Republic of Uzbekistan. Prior "decision" - called Section 21 SECTION 3, "Appellate proceedings" to work, and the court of appeal on Article 17. Articles appeal (protest) the right to appeal (protest) the duration and content of the appeal (protest) persons who participated in the study, a copy of the appeal (protest) on the written appeal (protest) in the face, appeal (protest) to get to work on the ruling, and the appeal procedure of the case, the court of appeal to cancel or modify the decision of the powers of principles, rules and regulations, such as the decision of the appeal instance.

Citizens and legal entities entered into legal force in case of disagreement with the decision of the court of first instance, their rights and legitimate interests of the cassation instance, the ability to protect the direct presence of his lawyer. This, in turn, timely correct the errors made by the courts of first instance, the court has become an important guarantee and avoid the red tape. This situation can be seen in the practice of the court.

Economic proceeding by the appellate court of the first instance decision has not come into legal force, and to review the rulings appeal instance. In addition, the Institute of the appeal court proceeding is listed as a separate stage. Appeal considers the complaint to the appellate court of appeal. The Republic of Uzbekistan "On Courts" in accordance with Article 57 of the Law of the Economic Court of the Republic of Karakalpakstan, regional and Tashkent city court: matters within its jurisdiction as a court of first instance and on appeal.

The economic purpose of the appeals process and the rationale to check the legality of the decisions of the court. Court appeal judges collegial case on the Rules of the Court of First Instance. The economic court of appeal or a combination of several requirements to separate the basis of the claim or to change the subject, change the size of the claims, filing a counter-claim, the respondent applied rules on the involvement of third parties. Appeal proceedings and in the appeal instance view is based on the nature of the content, you can highlight the following specific signs:

- appealed the court decisions did not come into legal force;
- The appellant received the document submitted by the Economic Court;
- The appeal of the second instance and collegial manner;
- Refers to the wrong decisions of the court of first instance and the filing of appeals in this case by a court of law or practice mode is set to the wrong materials or for supporting the wrong party who provided incomplete data;

According to the appellate court examines the legal and factual aspects of the material;

- Once in each of the appeal;
- The case will be within the powers of the Court of Appeal can only appeal;
- The case study and provided additional evidence;
- In addition to the economic court of appeal instance (new) evidence, if the applicant is not available for the submission by the court of first instance is based;
- Is the subject of proceedings of the court of first instance cases considered to be the subject of appeal instance [6].

Some of the unique features of the appeal proceedings pursuant to the principles limited. For example, oral disputes, etc.

Thus, the economic rights of interested parties in the conflict participants are not only the first instance court, as determined in accordance with the civil works of civil proceedings, with some exceptions, are protected by the courts. Consideration of such an order is the first case to be included in the court of material and procedural norms of human rights law or the complexity of the facts of the case, unless the basis for other reasons as well.

The high courts, the courts had acted within their authority shall be obliged to check the legal validity of the decisions he has made.

The Court of Appeal when the court of first instance as you needs to understand the procedural order. The Court of Appeal sent to the high courts like to see a new job and must decide on his own [7].

This place is important to note that, based on the practice court is the court of appeal with the rules concerning the terms of reference. Plenum of the Supreme Economic Court of the Republic of Uzbekistan No. 173 of December 28, 2007, "the appellate court has examined the application of the Economic Procedural Code of the Republic of Uzbekistan" according to the resolution of the complaint (protest) period begins the day after the date of the decision of the calculation. Appeal (protest) time is missed; the complaint (protest) can be restored by the court on the petition of the person. The petition of appeal (protest), the person who sent the applicant missed the deadline of the reasons and must be substantiated. The petition for complaints (protests) can be described in a separate application or appeal (protest) should be given at the same time.

Analysis of the positive aspects of the appeals introduction of this institution to highlight a number of important cases.

First of all, the appeal of the Institute to ensure better

implementation of the right to judicial protection, because it allows you to view the contents of the appeal case for the second time. In addition, the lack of results of the decision of the court of first instance, the decision reviewed by an experienced and qualified judges, the judges participated in the study to be free of local influences and an important spiritual significance for society as a whole to apply for and belief in the power of the law.

Second, the appeal of justice and the implementation of the Institute to ensure speed and accuracy.

Third, the court of appeal against acts of complaints in the first instance courts to serve as a line, and in turn, this leads to a reduction of judicial errors.

You may say the court of appeals, proceedings of these institutions that guarantee the fairness of court decisions and ensure the high level of protection of the rights and interests of the persons concerned. This, in turn, human rights and freedoms are the highest value of the developed democratic principles of human rights in the country.

At the same time, the appellate court violated the right protection (in contrast to the cassation instance) is due to be revised taking into account the slow implementation of it. However, the appellate review of the case study participants to link the new facts, new evidence (of the manner specified limits), the Court of Appeal of the evidence presented in this case and other materials analysis and allows you to accept the result of his decision. In addition, every time the appeals court does not consider the case is totally different. If you have complained about the decision of the court completely, and said part of the appeal.

In general, compared to other types of complaints against the decisions of the court at the appeal of its positive and negative aspects. However, other methods of complaints against the decisions of the court of appeal can not deny the positive aspects of economic activity, the Institute should be noted that [8].

Categories appeal instance, should be the final step of the process. Administrative court proceeding on particular categories of cases appealed in the number of appeals to be short of international standards and the implementation of the provisions of this procedure will allow the economy to [9].

Foreign law and legal practice in the decisions made as a result of the economic process, the rulings provided for in the rules to apply to the Appeal instance. In particular, the Austrian legislation provides for appeal proceedings to verify the nature of the conflict is not a new process and then not be seen for the first time identified deficiencies. An appeal by the court of first instance, and it should be given a period of 4 weeks. Entry into force of the decision of the appellate court complaint and the execution is suspended until a decision appeal. Austria, in 2007, 19.4% of the case on appeal and most of them are left unchanged [10].

The Republic of Belarus from January 1, 2014, the general courts and the courts combined into a single system [11]. According to I. Martynenko that the right of appeal proceedings following participants of the legal proceedings:

1) Persons participating in the case;
2) Not to participate in the study but not involved in the case, but accepted the decision of the court on the rights and obligations of persons and this is a violation of their legitimate rights and interests of individuals;
3) involved in the case as well as the state share in the authorized capital of legal entities, as well as the prosecutor appealed in order to protect the interests of the state and society;
4) The representative of the person, if he has an attorney to appeal against the decision of the court has the right to appeal;
5) The procedural legal succession occurs, the legal heirs of the persons participating in the case [12].

This is not a case of procedural law, the author of the work and the persons who have the right to appeal. However, the main part in the appeal proceedings and place the claimant and the respondent status, rights and obligations as well as to participate in this stage of the distinctive features. In particular, the appeal (protest) the person making the complaint and attached to other persons participating in the case, these individuals will send copies of the documents, the person involved in the case, appeal (protest) received a copy of his written opinion on the case and a copy of the written opinion other persons to confirm the evidence of consideration of the appeal to be sent to the court within days to ensure economic right, is due to additional evidence that the applicant was not able to provide the court of first instance in which court to receive additional evidence, the Court in the first instance the new requirements will not be accepted and the court of appeal, will not be considered important.

Civil Procedure Code, the court of appeal is the function of the provisions of Chapter 37, including persons involved in the case of Article 337 concerning the consequences of the court session appearance norm. Economic Procedure Code, this provision does not exist. That's why 21 of the IPC in accordance with the purpose of the relevant amendments to the following chapter.

165^{1}- Article. In this study, the effects of the participating entities shall appearance

If you come to the hearings that none of the persons participating in the case, and the case has been properly notified about the time and place of the information is not available, the court adjourned the case.

Participating in the case, related to the time and place of the proceeding, it is not a barrier to individuals not the case. However, even in such cases, the court failed to do if it finds an excuse to put the right.

The prosecutor or the attorney fails to appear before the court ruling, and it is superior prosecutor or the Chamber of Advocates of the Republic of Uzbekistan, the regional qualification commission.

Legal literature, the study of the rights and obligations of the parties in the appeal stage. According to E.A. Treshcheva business process and appeal on the issue of the parties litigation stage and the attention to the change in the size of their rights and obligations. In his opinion, written complaint (appeal) but not as the rights of the parties as to give a written opinion on the statement of claim should be mandatory. The appeal court proceeding allows the parties to strengthen the principle of t litigation [13].

This is the opinion of the author song. We believe that the economic protection of the rights of the parties to the proceedings are free, and the implementation of specific actions. To protect the economic rights of the parties in the proceedings of subjective rights, which are expressed in the statement of claim against the party or deny the claims

acknowledge that there is no connection know of. For example, a claim by the written comments on the request of the court to settle the sake of his work to the detriment of its legal effect or be challenged by the plaintiff cannot satisfy the demand. In this case, the violation of the principle of justice. Therefore, in any case, the appeal court examined in accordance with the requirements of the law and the arguments of the same, regardless of the primary responsibility to respond to him to be legitimate and fair decision. After all, the economic process based on the will of the parties the right to protection can be carried out or performed. In this approach, the written stage of the appeal of the respondent, the mind must be contrary to the subjective rights and the fundamental principles of the economic process, and such a request does not correspond to the content of the subjective right to protection.

In view of the above, the appeal instance can highlight the following features: appeal court decisions and have not submitted the relevant documents adopted by the Economic Court; the second instance of appeal and collegial manner; appeal (protest) to transfer refers to the wrong decisions of the court of first instance, and in this case by a court of law or practice mode is set to the wrong materials or for supporting the wrong party who provided incomplete data; According to the appeals court examines the legal and factual aspects of the material; once in each of the appeal; The powers of the court of appeal of the case is only part of the appellant's complaint; the case study and provided additional evidence; in addition to the economic court of appeal instance (new) evidence, if the applicant is not available for the submission by the court of first instance is based; the circumstances are not the subject of proceedings of the court of first instance considered the subject of the appeal instance.

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The role of the heads of states in modern international contract law

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Abstract
The article deals with the place and the role of heads of state in modern international treaty law, the signing and ratification of international instruments, an analysis of the legislation of the Republic of Uzbekistan in this area.

Keywords: international agreement, the head of the state, ratification

Introduction

In accordance with international law, the legal capacity to enter into international agreements is an inalienable right of subjects of international law and an essential element of the international legal [1].

States from ancient times determined the rights and obligations through the conclusion of international agreements. Moreover, as international practice shows that up to the beginning of the XX century, when the monarchy has maintained its influence in many countries of the world, international treaties concluded not on behalf of the state, and on behalf of the head of state - the monarch. In this regard, it is appropriate to mention the words of Louis XIV: «The state - that's me!". And indeed, if you look in the international treaties of the time, some of them it is clear that subjects of international law then identified with the heads of states [2].

As a result of the long history of the treaty as a regulator of international relations developed certain international legal norms establishing the procedure for concluding, action, validity, interpretation and termination of international treaties. Until recently, these rules were generally legal nature. A positive form they have acquired in the years 1968-1969 in Vienna, where the conference was held, convened for the purpose of codification and progressive development of the law of treaties. In 1986 in Vienna at the International Conference adopted the Convention on the Law of Treaties between States and International Organizations or between International Organizations.

Thus, under an international treaty, as it follows from Article. 2 1969 Vienna Convention and the 1986 Vienna Convention, it is understood governed by international law an agreement concluded by States and other subjects of international law in writing, regardless of whether such an agreement is contained in one, two or more related instruments and whatever the specific name.

The concept of an international treaty is also in the legislation of the Republic of Uzbekistan. The law "On international treaties of the Republic of Uzbekistan" states that an international treaty of the Republic of Uzbekistan - is an equal and voluntary agreement of the republic with one or more States, international organizations or other subjects of international law concerning the rights and obligations in the field of international relations [3].

Contracts can have a variety of names, or be without a title. Name of agreement (convention, agreement, treaty itself, charter, charter, covenant, declaration, protocol, etc.) does not have any legal significance, since the notion of "contract" is a generic [4].

Legislation states and the rules of international organizations determine which authorities may on their behalf to enter into contracts.

In some countries the head of state gives guidance on the preparation and conduct of negotiations, personally involved in the most important of them and sign international treaties or other international legal instruments. His obligation to inform about the negotiations and signing of acts that do not require ratification.

By their very nature, international treaties may be different, and this leads to different attitudes towards them by the head of state.

For example, in France, a number of contracts are subject to mandatory ratification by the President. This, as a rule, treaties affecting the fundamental, important issues for France. French diplomats to participate in the preparation of such contracts negotiations, as a rule, receive from the president special powers [5].

International treaties and agreements relating to less important individual questions, the President of France is not ratified. He only informed of their preparation. Oni accepted under the simplified procedure [6].

In addition, as in many other countries, there are international treaties that, the President may ratify and approve only with the consent of Parliament. According to Article 53 of the Constitution of France, this category includes peace treaties; trade agreements; treaties or agreements relating to international organizations; agreements binding on the public finances; agreements modifying the provisions of the legislation; contracts of assignment, exchange or territory of accession. Ratification of these agreements is carried out in the form of a decision by Parliament, by statute [7].

The ratification process in France heralded with great solemnity. The text of the international agreement shall be printed on special forms. Signature President of the Republic shall be subject to countersign the Prime Minister and Minister of Foreign Affairs. Contracting Parties shall exchange the texts of signed agreements.

Ratified and published in France the contract takes precedence over French law [8].

In the UK, under the constitutional arrangements implementing the foreign policy activities related to the Government led by the Prime Minister. Although the exercise of this delegated royal prerogative occurs without the prior approval of Parliament for the ratification of certain types of international agreements require the consent of Parliament.

Practice UK parliamentary approval of international agreements did not exist before the 20-ies of XX century. Since 1924, when the Labour government began to apply the practice, according to which the Royal Decree Parliament passed an international treaty or agreement, and if within 21 days no objections are received from him, then the contract is ratified.

English researcher P. Richards in his "Parliament and Foreign Policy» («Parliament and Foreign Affairs») distinguishes four types of international treaties that require parliamentary consent to ratification:

- Treaties amending in domestic law or affect the status of British taxpayers;
- Agreements by virtue of which the right to increase the Crown;
- Contracts, which requires approval by parliament;
- Agreements on the territory of change [9].

However, the subject of discussion in parliament is not the contract itself, and the law on its ratification. As a general rule, Parliament is powerless to change the terms of the contract and can approve or reject it.

In the United States, the President holds his signature instrument of ratification, but the most important international treaties ratified by the decision of Parliament (or one of the chambers). The US decision to ratify takes only the upper house of Congress (Senate) a qualified majority of two-thirds. It turns out that within the meaning of the provisions laid down in Section 2 of Article II of the US Constitution, prisoners are not signed by the president of a contract, since the signing is only the completion of the preparatory stage, and the text, officially approved by the Senate as the upper house of the US Congress. It is noteworthy that the initial draft of the US Constitution provides for full delegation of authority to conclude international treaties to the Senate. "Sparked heated debate on the role of the president, and a number of delegates suggested consider the chief executive of the Senate only as an agent to negotiate" [10].

The practice of international treaties the US shows that the Senate is reluctant to approve the contract. In addition, the senators may have when discussing the contract signed by the head of state to make major changes to it. And this, in turn, puts the president in a dilemma: either does not sign the instrument of ratification and thus bury the result of difficult and protracted diplomatic negotiations, or in a hurry to persuade its partner to accept foreign retroactively amended and supplemented by the senators of the upper chamber. And in the first and in the second case, there is the unpredictability and instability of the element, which among other things can damage the image of the US President in the eyes of his counterpart [11].

The powers of the monarch in the Arab world more broadly. Monarch has the right not only to conduct international negotiations at the highest level and to sign international treaties and agreements, and to issue special decrees ratifying them signed the international treaties that require ratification of such [12].

However, not all Arab countries, the head of state to sign and ratify international treaties are implemented so unconditionally. For example, in Egypt, President of the Republic concludes international treaties and transmits them to the National Assembly with the necessary explanations. These treaties have the force of law after the conclusion, ratification and publication in accordance with the established procedure. Treaties of peace, alliance, commerce and navigation and agreements relating to the change in the territory of the state, its sovereign rights or entailing use of funds of the state treasury, not provided by the current budget, subject to approval by the National Assembly.

The constitutional powers of the President to enter into international treaties, of course, do not mean that he should do it in person. However, this right remains with the Heads of State and, usually, they are using it at the conclusion of particularly important contracts worth personal participation of Heads of State.

International agreements entered into by the heads of state personally, must have the appropriate form. For the affected States such contracts unconditionally become legally binding. Preparation of the draft of such contracts is usually involved in the government or the Ministry of Foreign Affairs.

The norms of national legislation with the development of historical events in Uzbekistan found their consolidation, taking into account the primacy of international law. Art. 17 of the Constitution provide the legal adoption of universally recognized principles and norms of international law. Formation of the law of treaties in Uzbekistan is determined using both international law [13], and the national law of the Republic of Uzbekistan "On international treaties of the Republic of Uzbekistan" dated December 22, 1995. For comparison, the special laws on international treaties are not in the UK, Belgium, Germany, Sweden, Japan and other countries.

According to the Law of the Republic of Uzbekistan "On international treaties of the Republic of Uzbekistan" dated December 22, 1995, public bodies representing the Republic at the conclusion of international agreements, are as follows: President of the Republic of Uzbekistan [14], Oliy Majlis of the Republic of Uzbekistan [15], The Cabinet of Ministers of the Republic of Uzbekistan [16], The Ministry of Foreign Affairs of the Republic of Uzbekistan.

In the legal practice of the Republic of Uzbekistan used several types of powers: the powers of the President of the Republic of Uzbekistan, the authority of the Government of the Republic of Uzbekistan, the authority of the Ministry of Foreign Affairs of the Republic of Uzbekistan. In each case, depending on the type of international agreement, the authority issued by the authorities of the Republic of Uzbekistan, on behalf of which the contract is concluded.

In accordance with Article 28 of the Law "On International Treaties of the Republic of Uzbekistan" of 22 December 1995, the President of the Republic of Uzbekistan in accordance with the Constitution of the Republic of Uzbekistan ensures compliance with agreements concluded by the Republic, agreements and liabilities assumed.

President of the Republic of Uzbekistan as the head of state does not need special powers under according to 13 Law of the Republic of Uzbekistan " International treaties of the Republic

of Uzbekistan" 1995 year. He represents the Republic of Uzbekistan in international relations and in accordance with international law, and the Constitution of the Republic of Uzbekistan. According to article 93 of Constitution President of Uzbekistan conduct negotiations and sign international treaties of the Republic of Uzbekistan without special powers.

According to the Law of the Republic of Uzbekistan « International treaties of the Republic of Uzbekistan » 22 December 1995 year. art. 7 - Intergovernmental agreements are concluded at the highest level on behalf of the Republic of Uzbekistan.

It is a logical continuation of Art. 8 of the Law "On International Treaties of the Republic of Uzbekistan" dated 22 December 1995. According to which the proposal for the conclusion of international intergovernmental agreements on behalf of the Republic of Uzbekistan shall be made to the President of the Republic of Uzbekistan Ministry of Foreign Affairs of the Republic of Uzbekistan. Other ministries and departments are the President of Uzbekistan proposals on conclusion of international agreements on behalf of the Republic of Uzbekistan on matters within their competence, in cooperation with the Ministry of Foreign Affairs of the Republic of Uzbekistan or in agreement with them.

An important part of the process of ratification of international agreements is the signing of the instrument of ratification. According to article 18 of the Law "On International Treaties of the Republic of Uzbekistan", 1995 instrument of ratification signed by the President of the Republic of Uzbekistan on the basis of the Oliy Majlis of the Resolution on the ratification of an international treaty, which is sealed with his seal and signature of the Minister of Foreign Affairs of the Republic of Uzbekistan.

The ratification of an international treaty is a process in which the rule of international law is approved by the supreme state power and acts as a necessary step in solving the most important foreign policy issues, without any outside interference [17].

The Constitution of Uzbekistan establishes the range of subjects with the right to propose the conclusion of international treaties. The President represents the Republic of Uzbekistan within the country and in international relations, and is entitled to contractual initiatives in the process of international law-making. It was he who negotiates and signs treaties and agreements of the Republic of Uzbekistan, ensure the observance by the Republic treaties, agreements and liabilities assumed.

Of particular importance is the enforcement of the obligations assumed by the Republic of Uzbekistan under international treaties, and this is within the competence of the President of the Republic of Uzbekistan. The President, in accordance with the Basic Law, the exercise and take the necessary measures to ensure that the international cooperation of Uzbekistan with other subjects found more effective application on the basis of the primacy of international law and the subsequent implementation of those rules and principles in national legislation. The president is the guarantor of compliance with the rules of the international treaty on the basis of and pursuant to the provisions of the Constitution of the Republic of Uzbekistan.

In general, the introduction into national law of the world legal experience becomes a leading trend of legal development. The specific content of the presidency by the Constitution. According to the Constitution, the President of the Republic of Uzbekistan fulfils basic function in ensuring international cooperation between the states on the international arena. Of particular importance is the enforcement of the obligations assumed by the Republic of Uzbekistan under international treaties is included in the competence of the President of the Republic.

President of Uzbekistan, on the basis of the Basic Law, which gives him the breadth of international authority, shall take the necessary measures to ensure that the international cooperation of the state with other subjects found more effective application on the basis of the primacy of international law and the subsequent implementation of those rules and principles of national law.

All said above leads to the conclusion that the President of Uzbekistan determines the long-term political and legal basis for the implementation of contractual and legal obligations, the nature of the country's interaction with the actors. Activated part of the legal system of Uzbekistan in the process of globalization of the domestic law of states and internationalization, domestication of international law. The result is a higher level of civilization of the legal regulation in the country and increase the efficiency of international law [18].

Thus, the state representation in international relations is a traditional prerogative of the head of state in most countries in the world. Traditional affiliation executive powers of the sole head of state are due to the characteristic features of international relations, which are based, in particular, and on the confidence of the parties to each other. In the process of establishing and then maintaining the relationship between the contracting parties is very important role played by a senior official, legally representing the State in international relations [19].

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International parliamentary cooperation: A historico-political perspective

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Abstract
This article analyzes historical and political aspects of the emergence and growth of the global inter-parliamentary cooperation. The author attempts to cover major historical periods and political preconditions for the rise of ideals of parliamentarism, as well as the role of international parliamentary institutions in spreading and deepening inter-parliamentary contacts as inseparable part of contemporary international relations. The special focus is given to the importance of parliament as an instrument of foreign and international policy and the growing impact of parliamentary diplomacy in addressing political disputes and conflicts between states.

Keywords: inter-parliamentary cooperation, international parliamentary institutions, the ideals of parliamentarism, democratic deficit, good governance, parliamentary diplomacy, parliamentary oversight

Introduction

Over the last decades the unprecedented rise of international parliamentary institutions and the development of international parliamentary cooperation have been the most enduring characteristics of international politics. Initially, the international parliamentary cooperation led by burgeoning parliamentary structures aimed at promoting dialogue and peaceful settlement of conflicts between different parties thus maintaining regional peace. Today, however parliamentary expansion in global affairs range from monitoring international activities of states' and international organizations to sustainable development, human rights, democracy and addressing global problems like combating terrorism, drug trafficking, the proliferation of WMD, environmental issues and etc. Given the fact that the role of parliaments and parliamentary institutions are growing in global decision-making the author attempts to conduct a comprehensive research on the historical roots for the rise of legislatures as a foreign and international actor as well as to better understand the political and social preconditions that made these changes possible.

The rise of global inter-parliamentary cooperation is the major hallmark of the 20th century international development. Its unique growth is largely seen as the result of the institutionalization of ideals on *good global governance* and *better democratic representation* on the one hand, and the rapid development of international relations coupled with the deepening globalization processes on the other. Historically, parliaments had no or limited impact on foreign policy; as internal state bodies they were largely occupied with representative and legislative functions. Today, however, parliamentary factor is increasingly visible in foreign and international affairs highlighting the major change in its power and prestige. This article is an attempt to study the historical and political aspects of the phenomenal rise of global inter-parliamentary cooperation as well as the prospects of international system led by parliaments.

Historical perspective

The global parliamentary cooperation is the most dynamically developing aspect of contemporary international relations. As a relatively new phenomenon, the parliamentary involvement in international affairs began at the end of the 19th and the beginning of the 20th century. The gradual emergence and growth of so called 'international parliamentary institutions[1] with regional and global agendas has further widened the geography of worldwide parliamentary contacts. Although, few international parliamentary institutions had been working before the World War II (for example Nordic IPU (1907), Empire Parliamentary Association (1911)), it's worth noting that their rise to prominence had occurred in two distinctive historical crossroads. The growing involvement of parliament in international affairs had resulted in the context of global democratic awakening theorized by S. Huntington, a prominent American scholar, in his famous "The Third Wave". Given the significance of these periods, it is important to understand the expansion of parliamentary authorities over foreign and international affairs from a historical point of view.

I. Although some forms of parliamentary cooperation emerged at the end of 19th century in Europe, the devastating world wars in the region had extremely hindered its progress. Later, the post Second World War period in Europe has greatly transformed the ways public opinion has viewed the conduct of foreign policy and international decision-making. As fairly observed by Z. Sabic, in the years after the war, 'the public demand for a better transparency of decision-making in international politics came to the forefront of political debates in Europe' [12, p.260]. The rise of widespread public skepticism and mistrust was a result of disastrous wars that ruined millions of lives in Europe and beyond. According to A.

[1] It is worth to note that there are definitional challenges in identifying what actually international parliamentary institutions are and how these institutions should be categorized. The terms like "association" or "assembly" is also appear in some researches. However, over the last years, especially in annual reports of the Inter-Parliamentary Union, and in the works of several noted parliamentary scholars (C. Kissling, R. Cutler, Z.Sabic and etc.) the term of "international parliamentary institution" is widely used.

Kreppel '…in the immediate post-war period in Europe many 'federalist' movements emerged, with the goal of creating common bonds between countries which would mitigate the return of nationalism and prevent another war [7, p.53]. Not surprisingly, this popular public feeling is well-captured in the works of founding fathers of the European Union, who went even further by calling close regional integration so to "make war not only unthinkable but materially impossible"[2].

It is therefore the growing need for a democratic and accountable international system with active citizen participation has led to the burgeoning of international parliamentary institutions with regional and global relevance. With relatively limited power and resources, they aimed at challenging 'democratic deficit' in international politics, ruthlessly exposed in the course of events that led to the world wars. Few examples include *Parliamentary Assembly of the Council of Europe (1949), European Parliament (1958), NATO PA (1955), Benelux Parliament (1955), PARLATINO (1964), Arab Inter-parliamentary Union (1974), African Parliamentary Union (1976), ASEAN Inter-parliamentary Assembly (1977)* and etc. Several major historical events greatly contributed to the rise of parliament as an international actor. If it was the growing public consciousness of masses in Europe, coupled with a deep-rooted clamor for democratic international rule that has precipitated the emergence of International Parliamentary Institutions, the crumbling of colonial domination has accelerated the same processes in large areas of Asia, Africa and Latin America.

As a result, several parliamentary organizations emerged within both regional and international organizations eager to question traditional dominance of states (executives) in international affairs. The phenomenal rise of parliament with international ambitions have even led some scholars refer to the 'ideologically divided Cold War years of 20th century as a period of "parliamentarization" of international relations, or parliamentarization of politics' given the growth of 'public' and 'parliamentary' diplomacy[3].

II. The end of the 1980s and the beginning of 1990s marked a unique period of transition in world history with the collapse of the communism and the dissolution of the Soviet Union. The end of the Cold War heralded to a new era in human progress, strengthening the feelings of inter-dependence of human destiny, mutual understanding and a sense of shared responsibility for the common future. The unprecedented changes that had followed the breakup of the Soviet Union were truly historic, making, as rightly noted, the *'globalization* and *democratization'* two dominant themes of human development [4].

In such a favorable historical context that characterizes the post-Cold war years, the world has witnessed the mushrooming of international parliamentary institutions, particularly active in foreign policy and international affairs. Over 100 informal or formal International Parliamentary Institutions can be reported in the world today, not to mention their subsidiary organizations [6, p.10]. Ever since, global parliamentary movement has been calling for greater citizen participation in decision-making, and fervently advocating to create a kind of international system which will be marked with broad representativeness and more responsibility. The unique growth of parliamentary institutions has accelerated world-wide parliamentary contacts; parliamentary resources are increasingly being considered as an alternative force for maintaining peace and security, promoting mutual understanding through dialogue, finding negotiated settlement in today's conflicts. Parliamentarians are also striving to build an international environment in which peaceful international cooperation would be possible. Several parliamentary structures like *the British-Irish Parliamentary Assembly* (1990), *Baltic Assembly* (1991), *Central American Parliament* (1991), *OSCE Parliamentary Assembly* (1992), *CIS Parliamentary Assembly* (1992), *Belarus-Russian Parliamentary Council* (1997), *Parliamentary Union of the Organization for Islamic Cooperation* (1999), *Asian Parliamentary Association for Peace* (1999) appeared in this period of time.

The growth of international parliamentary institutions has significantly changed the nature of international cooperation by bringing peoples' voice ever closer to international decision-making. 'Nowadays, inter-parliamentary contacts are having great impact on the dynamics of contemporary international relations; its forms, substance and perspectives [3, p.22]. Gradually, ever-expanding parliamentary contacts have become an inseparable feature of contemporary international relations. As an actor of international decision-making, parliament is widely viewed as a trustworthy instrument of foreign policy in mitigating conflicts, preventing wars as well as in shaping more constructive environment for peaceful cooperation.

The parliamentary dimension of international institutions has increased with the active involvement of parliaments in international affairs. This tendency has later led to the creation of parliamentary assemblies within international organizations aiming to conduct parliamentary oversight of the activities of these institutions. The parliamentary assembly of the OSCE, NATO PA can be a good example to support this claim. This phenomenon is also known as the "parliamentarization of international organizations". Today, the activities and democratic credentials of any prestigious organization are often criticized if it does not have parliamentary body.

Parliament as an international actor

The rise of parliamentary involvement in foreign policy has gradually transformed the nature of international cooperation, its forms and mechanisms. Today, we witness the institutionalization of global aspirations for greater parliamentary participation in international political processes, demonstrating the rising public demand to hold global institutions accountable by universal democratic standards. In the context of so called *"global political awakening"*[4], the

[2] It was the primary goal of the Schuman Declaration, which called for sharing strategic resources in order to avert future wars between once conventional rivals such as Germany and France. As we know, the Schuman Declaration has later led to the creation of the European Coal and Steel Community (ECSC), the cornerstone of the EU.

[3]Such claims were made by Z.Sabic, in his abovementioned work as well as by A. Malamud and S.Stavridis in their following research: Parliaments and Parliamentarians as International Actors.//Ashgate Research Companion. –P. 103. Available at: http://apps.eui.eu/Personal/Researchers/malamud/Ashgate-Malamud-Stavridis.pdf

[4]In his widely acclaimed work titled as the "Strategic Vision: America and the Crises of Global Power" (2013), Zbigniew Brzezinski argues that the world is witnessing 'Global Public Awakening', a unique historical and social phenomenon, as a result of rapid globalization of human lives and the remarkable development of visual means of communications. According to

responsibilities of international parliamentarians to meet peoples' expectations are widening. The newly-acquired global significance urging parliamentarians pursue their goals more assertively and introduce certain mechanisms of *'checks and balances'* to oversee the work of influential international actors. Regarded as an embodiment of democracy, parliament can rightly be qualified an international watchdog for better global administration. It is therefore, the *"parliamentary dimension"* is becoming more evident in the activities of international organizations such as United Nations, IMF, WTO, World Bank, OSCE and etc. More and more, parliamentarians, along with omnipresent civil society institutions, are trying to fill the much-talked about topic of democratic deficit in global affairs by overseeing the democratic nature of international system and also monitoring the democratic legitimacy of inter-governmental institutions.

Parliamentary scholars S.Stavridis and A.Malamud made a strong case for the link between democracy and parliamentary involvement in foreign affairs. They argue that the democratic countries have expanded the 'reach' of their parliaments in world affairs [8, p.103]. Some other scholars stress that "the borderline between domestic and international policies is blurred" and that "…the days when foreign policy, and more specifically trade policy was the exclusive domain of the executive branch are over" [11]. Norwegian scholar Gram-Skjoldager stresses a similar complementary idea arguing that, "the intertwinement between international and domestic policies implies that the role of domestic actors becomes more important in relation to international affairs"[5].

It is worth noting that the expansion of parliamentary influence over foreign and international affairs has significantly widened the global responsibilities of parliamentarians'. As a foreign policy instrument, the main functions and responsibilities of parliaments' are as following:

- To scrutinize foreign policy activities of states (executives);
- To improve the country's international standing and image abroad;
- To promote representative democracy and the ideals of parliamentarism world-wide;
- To improve the representation of peoples' interests in an international arena;
- To monitor the legitimacy of decisions taken by international organizations as well as the overall activities of international and inter-governmental institutions;
- To promote more democratic, transparent and representative decision-making in International Relations;
- To foster a world-wide parliamentary dialogue for peaceful cooperation and so on and so forth…

Moreover, we've all the rights to emphasize that the regional and international parliamentary institutions are crucial as *think tanks*, generating knowledge, advocacy and policy expertise and thus providing better alternative solutions for addressing world's major challenges. The work of Inter-Parliamentary Union (IPU) and other parliamentary structures are cases in point. Particularly, the IPU has been consistent in strengthening parliaments around the world in order to promote representative democracy and foster global parliamentary dialogue by regularly identifying major problems and challenges facing modern legislators. The works of international parliamentarians can well be improved by the analytical research provided by scholars and handful of experts working within the parliamentary bodies[6].

Moreover, parliament can also be of great significance in the foreign policy area with its following virtues:

1. Parliamentary cooperation can be useful instrument of *international understanding* and therefore, often considered to be effective in mitigating conflicts and resolving disputes. Bringing 'parliamentary spirit' to IR implies the use of soft power and diplomatic means rather than to employ military ones;
2. Public opinion traditionally favors parliament as an important institution in '*conveying public concerns'* both nationally and internationally and hence benefits substantial moral support;
3. Unlike executives, legislatures are viewed as being more reliable and trust-worthy instrument of public diplomacy.

To date, given the accelerating pace of globalization, the world-wide parliamentary contacts have become even more intense with the parliamentary factor increasingly visible in various areas of international life. Suffice to say, the deepening cooperation of parliamentarians with the United Nations in matters of global concern[7]. Not surprisingly, the number of people holding the belief that the time is ripe to create a World Parliament or the Parliamentary Assembly of the United Nations is growing in academic and particularly, in civil society communities[8]. Although it seems a distant prospect for the current political environment, one definitely should not underestimate the power of the mobilized, global civil society. The only fact that the European Union and the European Parliament have both emerged from the ashes of war-torn Europe, (where such developments were widely seen to be unrealistic) can further support the cause of the parliamentarians striving to establish a parliamentary body of the United Nations.

Parliamentary diplomacy

The extension of parliamentary authorities over foreign and international affairs led to the emergence of a new field called *'parliamentary diplomacy'*. Since parliament has traditionally been a domestic actor with legislative and representative

his theory, the populations of the world today are more politically activated and socially conscious than at any time in human history.

[5] For a further overview please see: Shaping and controlling foreign policy. Parliamentary diplomacy and oversight and the role of the European Parliament. http://www.europarl.europa.eu/RegData/etudes/STUD/2015/549045/EXPO_STU(2015)549045_EN.pdf

[6] The European Parliamentary Research Service (EPRS) is a case in point. The EPRS has been providing the European Parliament with in-depth analyses and alternative policy options in order to improve the efficiency of European legislators.

[7] By recognizing the growing impact of parliament, the United Nations has explicitly called national and international parliamentarians for cooperation in meeting the objectives of the Millennium Development Goals (MDGs) and later Sustainable Development Goals (SDGs). For example, the paragraph 30 of the UN Millennium Declaration emphasizes strengthening further cooperation with parliaments through their world organization, the Inter-Parliamentary Union, in various fields, including peace and security, economic and social development, international law and human rights, democracy and gender issues. To find more information please refer to the UN Millennium Declaration.

[8] It is fair to mention the role of the Campaign for the Establishment of a UN Parliamentary Assembly (CEUNPA), which is a network of civil society groups and parliamentarians around the world dedicated to creating UNPA.

functions, the relatively new role of parliament as a foreign policy instrument is yet to be properly studied. A precise definition of what exactly consists of parliamentary diplomacy is also lacking.

However, the academic interest in the phenomenon of parliamentary diplomacy is growing over the recent years. According to Dutch legislative scholars, the term parliamentary diplomacy is used 'to describe the wide range of international activities undertaken by members of parliament in order to increase mutual understanding between countries, to better conduct government scrutiny, to democratically represent their people abroad and to increase the democratic legitimacy of inter-governmental institutions' [14, p.93-99]. On the other hand, the Portal for Parliamentary Development defines parliamentary diplomacy as 'the means by which two or more parliaments conduct an ongoing dialogue with regard to key international issues through institutionally or individually'[9]. While accepting the absence of a standard definition, R. Cutler argues that 'parliamentary diplomacy represents an important middle ground between the traditional level of interstate diplomacy and the new level of transnational co-operation amongst grassroots non-governmental organizations (NGOs) [1, p.82-83]. By summarizing many of its imperfect definitions G. Hamilton laconically referred to parliamentary diplomacy as '*diplomacy with a democratic mandate* [5].

Nevertheless, we can stress that the existing definitional confusions will dissipate over time once the role of parliament as a foreign and international actor becomes more apparent. Presumably, this problem can also be attributed to distinctively evolving features of parliamentary diplomacy as a new field of political discipline.

Known as the world organization of parliaments, the Inter-Parliamentary Union (IPU) is leading global efforts to promote international parliamentary cooperation, representative democracy and parliamentary diplomacy, and hence challenging democratic deficit and the executive dominance in world politics. In a similar way, parliamentary involvement is also deepening in such areas like sustainable development, trade, tackling climate change and demographical issues. In order to stimulate the rising parliamentary contribution to international development in general, and the role of the IPU in particular, the United Nations has granted a permanent observer status to the IPU (2002) and even honored it branding as a 'unique parliamentary counterpart of the United Nations [2].

In a current international system crowded with state and non-state actors, the parliament's profile as an embodiment of democracy will continue to grow. Even now, parliaments are exerting significant influence over global decision making through national, regional and international parliamentary institutions. According to George Noulas, three major factors are important for a parliament to play a wider role in foreign affairs. They are the '*historical origins'* of the country, its '*political system'* and the overall '*position in the international arena* [10]. In a globalised world, one might expect further expansion of parliamentary powers, civil society, and other non-state entities in creating, as they wish, a more representative, democratically-governed and accountable international system.

[9] Parliamentary diplomacy, Portal for Parliamentary Development. Available at: http://www.agora-parl.org/

Criticism

The end of the Cold War has sparked somewhat euphoric feelings about the formation of a new world order with the international institutions in alliance with global civil society at its core. Unfortunately, these hopes have later waned as the world encountered different kinds of problems and challenges. The President of the New America Foundation, A. Slaughter was right when she famously quipped that 'the new world order led by the United Nations guaranteeing international peace and security is a chimera' [13]. Her criticism is not an isolated one. Several other scholars have traditionally been very skeptical of the role of international institutions and have often questioned the actual impact of parliaments in international politics[10]. For example, a distinguished American political realist J. Mearsheimer claims that 'international organizations (institutions) have minimal influence on state behavior and thus hold little promise for promoting stability in the post-Cold War world' [9, p.7-8].

Those scholars who critically examine the role of parliamentarians as foreign policy actors point to such major flaws as the institutional deficiencies of parliamentary assemblies, implementation capabilities and also the reluctance of states to endow parliaments with substantial powers [12, p.260-262]. The critiques of parliament also refer to some common weaknesses of legislatures such as, the lack of coherent diplomatic agenda, institutional consistence, and more crucially, the lack of resources and power. But particularly, they are highly skeptical of parliaments' real ability to challenge state diplomacy or influence over international decision making. For that reason, we sometimes witness such cynical comments calling parliamentary diplomacy as being *'nothing more than parliamentary tourism'.*

Conclusion

The so called global political awakening, the rapid progress of the means of information, the Internet, sustained social and economic development have further increased the nature of international politics. In this regard, the development of international parliamentary cooperation embodies global aspirations towards more democratic, free and fair international system. The rise of parliament as a foreign and international actor should be considered as a result of overall human progress, the rapid institutionalization of universal ideals and globalization. Nowadays, the parliamentary dimension is becoming more visible in the daily activities of many international organizations and not surprisingly, these organizations are aware of the growing legislative scrutiny directed at their world-wide activities. The times when states acted solely and hence international affairs were perceived to be exclusive executive prerogative have long gone to history. With significant public support for being a source of legitimacy and for the representative nature, the global parliamentarians are more vigorously pursuing their ambitious goals of building more open, transparent and democratic world order.

It's worth noting that the international organizations, civil society institutions and global parliamentarians are at the forefront of building better, responsive and more democratic

[10] The representatives of Political Realism are often critical of parliament's foreign policy role. Political realists do not believe in a world order ruled by international organizations or parliamentarians. They firmly hold a view that executives (states) are the only important actors in international politics.

world order. Therefore, parliamentary cooperation on both regional and international level is deepening by giving dynamism to the development of contemporary international relations. In our globalised, deeply inter-connected world, the rise of global parliamentary contacts as well as the active involvement of parliamentarians in foreign affairs will further grow by fostering mutual understanding between nations, cross-border solidarity, political dialogue and religious and cultural tolerance. That's why, the future activities of parliamentarians will be an important test for parliaments' claim as a force for good and also building an accountable, democratic and open international order.

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Interim measures (for example, civil cases)

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Abstract
In this article it is described the measures on securing of claim (on the example of civil cases), the foundation for the securing of claim. As well as it is analysed the measures on securing claim, consideration of an application for interim relief, consequences of appeal a complaint or appeal against a ruling on securing the claim, research of theoretical, practical and scientific aspects of this institution.

Keywords: Grounds for action, measures to ensure the claim, consideration of an application for interim relief, cancellation of securing a claim

Introduction

In recent years, in the Republic of Uzbekistan in a phased implementation of the judicial reform is a priority to ensure equality of substantive and procedural rights and interests of the parties in the courts in the resolution of disputes and the achievement of rendering legal, grounded and just decision of the court on the case.

Full provision of the rights and legitimate interests of the persons who come to the court, the completion of the execution of judgments, storage assets having material value, which are the subject of dispute, goals and actions to participate in full actors in the proceedings in the court session is carried out by Institute for securing the claim in civil procedure law.

Chapter 24 (Articles 248-258) of the Civil Procedure Code of the Republic of Uzbekistan devoted to the institution to secure the claim.

According to this, under the provision of the claim refers to the application of measures provided for by law in respect of the defendant in preparing the case for trial or trial, on the initiative of the court or the parties involved in the case on the facts of the case to ensure the execution of the decision.

Ensuring action is allowed not only in the proceedings in the court, but also in the course of action and it is provided to enforce. Secured claim seeking enforcement (prevention of the destruction of the object of the claim, complexity of execution, saving the possibility of execution, etc.) the decision.

Securing a claim - it is considered to safeguard the rights and interests of citizens and legal persons, which is enshrined not only in the law of civil procedure, and it is enshrined in the norms of the criminal procedure law.

Ensuring action - aims to redress and the full restoration of the violated property rights of citizens and legal entities as a result of criminal acts or civil legal disputes.

Civil Procedural Law does not provide for securing the future of the claim, it is applied only after the initiation of civil proceedings.

Measures to ensure the claim can also be used in the course of the preliminary investigation on the basis of the criminal procedure law.

According to the analysis of the judicial practice, to ensure that a claim for the award of the measures permitted in litigation matters, and helps to complete the claim.

Paragraph 12 of Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On application by the courts of some rules of civil procedure law," courts should bear in mind that stated in Art. 249 Code of Civil Procedure of the Republic of Uzbekistan interim measures apply if their failure may make it difficult or impossible to enforce court decisions, both in the process of preparing the case for trial, and in consideration of the case.

According to the theoretical rules of civil procedure, to ensure the claim is a separate institution is carried out mainly with a view to resolving any disputes between the parties of action proceedings, enforcement of judgments on the stated requirements and secure. At this time, in the civil courts [1] in cases of property division, debt collection makes the determination "of the seizure of property", in cases of cancellation or annulment of decisions on residential areas, land plots - a definition of "the suspension of construction", "on the demolition of illegal buildings," in cases of recognition author of the work - the definition of "suspension of publication of the work" for the various categories of civil cases - the definition of "prohibiting the defendant leaving the territory of the Republic of Uzbekistan", "suspension of the defendant's actions that led to the dispute", on this basis, to ensure the immediate implementation of these definitions, they sent respectively to the judicial departments, notaries, police, border guards and the national security service.

According to the content of Article 248 of the CPC of Uzbekistan foundation to ensure the claim can be divided into two forms: the material foundations for the claim and procedural foundations of the claim. The material foundations of security for a claim related to the emergence of the need for action, on the basis of pre-supposed that the execution of court decisions directly on the case is complicated or is impossible. Procedural basics of security for the claim as provided for in the measures implemented and provided at the initiative of the court or the parties involved in the case (Article 33 of the Civil Procedural Code of Uzbekistan).

In Article 249 of the CPC of Uzbekistan stipulates measures to

secure the claim, according to which measures to secure the claim are the following:

1) seizure of property or sums of money belonging to the defendant and held by him or another person;
2) prohibiting the defendant from performing certain activities;
3) the prohibition of other persons to transfer property to the defendant or to carry out in relation to its other obligations;
4) suspension of the sale of property in the case of a claim for the release of his arrest;
5) The suspension of recovery under the executive document, contested by the debtor in court if such a challenge is permitted by law.

According to the analysis of the judicial practice and statistics for 2015, the courts civil cases took 20.3 percent of the material nature of the case, and only in respect of 15 per cent of these cases, interim measures have been taken.

In the production of civil cases, mostly, measures have been taken to ensure the claim, as the seizure of property, car and housing, as well as the application of the prohibition to travel abroad in respect of the defendant in cases alimony. This means the full protection of rights and legitimate interests of citizens and legal entities, as well as the restoration of property rights and strict enforcement of its judgments.

Legislation specifies the cases in which no measures are taken to secure the claim. Securing a claim by seizure of wages, income, pensions and scholarships, in addition to claims for alimony, compensation for damage caused by injury or other impairment of health, as well as the death of the breadwinner, for damages caused by the theft of another's property is not allowed.

Where necessary, the court can be applied to several types of maintenance claims so that their total amount does not exceed the price of the claim.

The above measures, in terms of content, are used against the defendant. In this sense the goal of action advisable characterized as follows:

- **At first,** maintenance of the claim is brought to the end of the aims and objectives of action for handling citizens in court;
- **Secondly,** it protects the rights and interests of the plaintiff;
- **Third,** it is the means of application of measures stipulated by law substantive and procedural coercion against the defendant is not in force at the relevant requirements;
- **Fourth,** it serves to strengthen the existing procedure in order of the court.

According to the Civil Procedure Code of the Republic of Uzbekistan the application for interim relief allowed by the judge (court), considering the case, the same day without notifying the defendant and other persons involved in the case.

Definition for interim relief is to be executed immediately following the procedure established for the execution of the judgment.

As explained in the resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On decisions in civil cases of first instance court" ruling on securing the claim belongs to the category definitions, submitted as a separate document.

Article 253 of CPC of Uzbekistan establishes liability for failure to comply with measures to ensure the claim, according to which in case of violation of these prohibitions guilty persons are, by definition, the court fined five times the minimum wage. The plaintiff on the general basis entitled to recover from the loss of these individuals caused by the failure of the court for interim measures.

Measures to ensure the claim can be cancelled by the court considering the case. In the event of a failure in the lawsuit claim maintenance measures will remain until the court decision comes into force. However, the court may at the same time with the decision or after the decision to make a determination on the abolition of security for the claim.

On determination on issues of private complaint or lawsuit brought by a private protest may be filed. If the definition for interim relief was made without notice to the person who filed the complaint, the deadline for filing a complaint shall be calculated from the date of delivery of a copy of the definition or when it became known that definition.

In Article 257 of the CPC of Uzbekistan stated consequences complaint or protest on a ruling on securing an action, this procedure creates a condition for the full enforcement of judgments handed down.

Filing a private complaint or private protest bringing to a court for interim relief shall not suspend the execution of this definition. Filing a private complaint or private protest bringing to the court decision on cancellation of securing the claim, or the replacement of one species by another provision of the claim shall suspend the execution of this definition.

The court in a case on the basis of the principle of equality of arms, protects the interests of not only the plaintiff but the defendant, so the purpose of cost recovery as a result of security for the claim, the court (judge) with the claim provision may require the plaintiff compensation for damage that may be caused respondent. Defendant after the entry into force of which the claim is denied, the right to demand from the plaintiff's damages caused by him at the request of the plaintiff accepted measures to secure the claim.

The plaintiff, defendant and third persons equally have the right to judicial protection.

Based on the principle that legal proceedings in civil cases is based on the equality of the parties specified in Article 8 of the Civil Procedure Code, in procedural legislation also allows the protection of the interests of the defendant in the process of securing the claim.

In particular:

- Participation in the hearing to replace one type of security for a claim by another;
- While ensuring an action for recovery of a sum of money the defendant has the right to return of enforcement measures to make the deposit account of the court the amount claimed by the plaintiff;
- By a particular decision of the trial court brought a private complaint and private protest may be filed;
- The defendant after the entry into force of which the claim is denied, the right to demand from the plaintiff's damages caused by him at the request of the plaintiff accepted measures to secure the claim;
- In addition, in accordance with Article 258 of CPC of Uzbekistan the court (judge) providing a lawsuit, the plaintiff may require the defendant to provide the possible losses.

Securing a claim is allowed during the initial claim and counterclaim in the process. But in many cases, at the stage of preparing the case for trial can also be provided with a lawsuit. In addition, in most cases, it allowed the claim security in the

stage of execution of judicial acts and acts of other bodies.

Analysis of the types of action suggests that measures to ensure the claim shall apply in respect of claims for the award. These measures are not only in the courts of first instance, but also in the higher courts (appeal, cassation, supervisory authority) in accordance with the law. for example [2], in the inter-district court of Tashkent in civil matters when considering the action to evict the plaintiff TH the defendant BY, taking into account the receipt of the statement on the application of interim measures, considered the materials of the case, the court as a measure to secure the claim of the defendant applied the arrest of residential premises and made the appropriate determination. The Court for the purpose of enforcement of definitions on the civil case sends a copy of the determination of notarial bodies, cadastral services of technical inventory, and other organizations involved in activities related to the subject of the arrest.

In conclusion, it should be noted that the features of the claim to ensure reveal the essence of the Institute to ensure the claim, are the study of theoretical, practical and scientific aspects of the institution, the development of appropriate conclusions and manifested in the following:

- **At first,** Institute to ensure the claim is a separate institution from the legal point of view, directly regulated by the Civil, Civil Procedure, Criminal, Criminal Procedure, Economic Procedure Code of the Republic of Uzbekistan and the laws of the Republic of Uzbekistan "On arbitration courts", "On the performance of judicial acts and acts of other bodies "," On Notary "and other legislative acts.
- **Secondly**, to ensure the claim is a procedural measure of coercion tangible and intangible nature of the defendant.
- **Third,** in the CPC of Uzbekistan foundation, and measures to ensure the claim specifically mentioned, their expansion is not allowed, the measures can be replaced by others.
- **Fourthly,** the definition for interim measures shall take effect immediately.
- **Fifth,** the decision of the court for interim measures may be appealed or protested.
- **Sixth,** for non-provisional or protective measures in the legislation established a measure of responsibility.
- Based on the foregoing, with respect to the institute to ensure the claim separately highlighted some of the features:
- **First,** the court may apply several measures to ensure the claim, but the total amount shall not exceed the price of the claim;
- **Second,** the court may substitute one measure to secure the claim to the other;
- **Thirdly**, the measure to ensure the claim can be applied in relation to the initial claim and counterclaim against. Although this issue is not specifically listed in the Code of Civil Procedure, it is permitted on the basis of common rules. But there is no indication on the non-use of provisional or protective measures in respect of counter-claims.
- **Fourth,** measures to ensure the claim can be used in criminal procedural law in the resolution of civil claims.

But this procedure is not explicitly stated in the Code of Civil Procedure of the Republic of Uzbekistan. According to the research of judicial practice, the application of provisional or protective measures in the resolution of civil claims by necessity will allow to maintain the claims and the subject of the claim fully enforce the judicial decisions.

In the process of securing the claim the courts should take into account that, in procedural legislation does not specifically indicate what measures securing the claim shall apply in relation to certain actions.

Applied interim measures must comply with terms of the plaintiff asserted claims**.**

Do not use provisional or protective measures, not provided for in the procedural law.

These circumstances serve to further improve the standards to ensure the claim in the trial and in the course of execution of judicial acts.

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The concept of interested (Concerned) person to trademark in accordance with the legislation of Uzbekistan: Legal analysis and proposals

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Abstract
The article presents scientific and theoretical analysis of the rights of interested (concerned) persons in trademark (service mark), the legal framework and procedure for their implementation, as well as the aspects of protection rights to the trademark (service mark), by the owner of the exclusive rights (absolute owner), from the demands of the interested (concerned) persons.

Keywords: trademark, interested (concerned) person, the owner of the exclusive rights

Introduction

In accordance with the first paragraph of article 1102 of the Civil Code of the Republic of Uzbekistan, legal protection of a trademark (service mark) shall be provided on basis of its registration. In addition, the exclusive rights for a trademark shall be certified by certification on registration of a trademark (service mark).

The implementation of rights in relation to trademark include the followings: production of goods, giving it to another person for the purpose of temporary use, involving in business activity as a share, disposal to another person without keeping the exclusive rights to trademark.

In some cases, we interpret exclusive rights to trademark as exclusive rights to property. But this is wrong, because property rights are given to a person for life, even when one died, one's heirs possess the right to use and dispose the property and they can ensure their rights, as they wish, in the way not prohibited by law.

One of the identifying features of the property rights from the exclusive rights is specified in the first part of article 1104 of the Civil Code of the Republic of Uzbekistan: "*In case of nonuse of a trademark without good reasons at all times during five years, its registration may be cancelled by request of any interested person*".

This means, according to the Civil Code of the Republic of Uzbekistan, owner of the exclusive rights must use the the trademark which belong to him/her. This is an imperative rule for trademark owners. We decided to clarify some points in the article 1104 of the Civil Code of the Republic of Uzbekistan. The legal status of the interested person is not regulated in detail. Besides that, certain concepts (defined in article 1104) such as "continuous non-use of trademark" and "any interested person" require deeper legal analysis.

After all, canceling of trademark ownership on a legal basis, which belong to owner of the exclusive rights, must be proven by the circumstancial facts.

If the entitled state body finds the groundless interest of other persons to trademark lawful, and decides for the benefit of other persons, this leads to violation of the rights and interests of the subject who personalized the trademark.

Trademark certificate is valid for 10 years from the date issued, in accordance with article 21 of the Law of the Republic of Uzbekistan "On trademarks, service marks and names of places of origin of the goods".

If the owner of the exclusive rights does not carry out any activity (in relation to the use of trademark) during the 5 years, it can be canceled according to the request of any interested person.

Based on the Article 25 of the Law (August 30, 2001) "On trademarks, service marks and names of places of origin of goods", "*the trademark validity, on basis of the decision of the court, may be fully or partially terminated before the deadline, if there is continuous non-use of it in any five-year period*".

In accordance with the legislation, "When hearing the case on early termination of the validity of the certificate of trademark in connection with the non-use of it, the evidence, provided by the owner of the trademark, proving the circumstances that prevented from the use of trademark can be taken into account".

Including the concept of "interested person" in the legislation related to the legal regulation of trademarks, first of all, is causing the owners of the exclusive rights to treat the trademarks as "unnecessary items". This is being an artificial barrier to legitimate use of trademarks, which are so similar that they could be confused, or almost the same, by getting permission from relevant government agencies.

Treating trademarks as "unnecessary items" can be reflected like this: a person registers (compulsory) the trademark, in fact, he does not use it. This is "getting benefit without using" by abusing one's own interests [1].

In this case, the negative aspects can be seen when it leads some obstacles in registration, by competing persons, of identical or similar trademarks in relation to the registered ones. As a result, use of trademarks (which are in non-use) hinders the development of the market. In order to restrict competition their owners register the same or similar to the trade marks and this is leading to the establishment of

[1] Kudakov A.D. Non-use of a trademark as the basis for the termination of its protection: Dissertation for the degree of Candidate of Juridical Sciences. - Moscow, 2006.

limitations [2]. Here, the interested person can apply to the competent state body with a demand from the owner of exclusive rights in the following content: "*if you are using the trademark, then give us permission to use it*".

In protection of the interests of the interested person with regard to trademarks, first, we should define who can be the interested person and the conditions and procedures should be explored. Unfortunately, the identification and legal assessment of the interested person in trademark is not reflected in laws and normative legal acts. In law enforcement practice, this can lead to some misunderstandings, especially in consideration of the requirements for the interested person in trademark.

The provision and protection (keeping by the owner of exclusive rights the groundless (unreasonable) trademark under his/her ownership) of the rights of the interested person with regard to trademarks are regulated with administrative and procedural legislation, not with the rules of civil law.

The most important feature of the interested person is his right to make a claim in the interests of their trademark [3]. Person's interest may be allowed by the court only when there are related grounds. It would be logically wrong to use the concept of "interested person" for any person.

The concept of interested person in trademark reflected in the Paris Convention for the Protection of Industrial Property dated March 20, 1883. In accordance with the article 9 of the Convention, the interested persons could be legal and physical persons. Broader interpretation is given in article 10. According to it, "interested person is a physical or legal person (entity) who prepare, sell and produce". The rules of this Convention are exercised in all countries, which ratified the convention, with regard to the objects of industrial property (such as invention, useful model, industrial sample, trademarks, service marks, firm names, origin of place names of items).

Legal status of "interested person" in trademark is determined and specified in the legislation of some countries. For example, in accordance with he article 1486 of the Civil Code of the Russian Federation, if the owner of the exclusive rights does not use the trademark continuously for 3 years, interested person (party) shall have the right to apply to the relevant authorities to cancel the it (the right to trademark). In accordance with the same law, the applicant as an interested person, is required to prove that the owner of the exclusive rights is not using the trademark. In turn, if the owner of the trade mark submits evidence that he/she did not use the tardemark due to the reasons that are not related to him/her (for example, the company temporarily stopped production because of reconstruction, re-equipment or there has not been sufficient demand for the goods in the market), this can be taken into account [4].

According to the article 46 and 47 of the Law on Trademarks passed in 1994, in England, any person has the to apply to cancel the registered trademark [5]. In accordance with the laws of this county, registered trademark may be cancelled by the decision of the government body that registered it or based on the decision of the court. Similar rules to the concept of an interested (concerned) person in trademarks are given in the Laws of Germany, article 25 of the Trademarks Act, article 2 of the law on trade marks of Canada, in article 12 of the similar Law in Switzerland. In all of the above-listed countries, if the owner of the exclusive rights does not use the trademark continuously for 5 years, interested person (party) shall have the right to apply to the relevant authorities to cancel the it (the right to trademark).

In the Russian Federation, the State Patent Office Persons, which determines the interested (concerned) person in trademark, worked out Information Letter on May 20, 2009, No. 3, "On early termination of trademark as a result of non-use of trademark on the basis of the application from the interested parties". This Letter explains the concept of interested (concerned) person expressed in article 1486 of the Civil Code of the Russian Federation.

The determination of interest (concern) of persons in trademark, in most cases, is regulated not with the norms of substantial law, but the norms of procedural law. Because a the determination of interest of persons in trademark is expressed by whether the subject has the right to claim or not. Secondly, if provided relevant evidence, examined [6] whether there is aninterest or not, and as a result, the court decides whether to receive the case for hearing or not.

In accordance with the part 5 of article 25 of the Law of the Republic of Uzbekistan "On trademarks, service marks and names of places of origin of the goods" (August 30, 2001), early termination of the certificate given for the trademark is carried out by the decision of the Board of Appeal or court decision, on the basis of the application, submitted to the Agency by the trademark owner or the certificate (for the use of place name of the origin of goods) owner.

When trademark is registered but not in use, this results in appearance of exclusive rights for personalization tools such as company names, domain names.

In accordance with the paragraph 3, part 2 of article 9 of the Law of the Republic of Uzbekistan "On trademarks, service marks and names of places of origin of the goods" (August 30, 2001), the person who wants to register the trademark are grouped according to the International Classification of Goods and Services. The list of goods and a request for registration of the trade mark should be displayed. That is, the person that requested the registration of the trademark identifies that there is interest in the production of such products. The produced goods under the requested trademark determined by "Niche Agreement on International Classification of trademark and services for registration of goods".

The person, who personalized trademark, as noted above, registers this or that class of commodity for production and produces. However, in some cases, the owner of the trademark does not have the ability to produce all the goods under the registered sign. Consequently, there exists non-use of trademark. That is, the owner of the exclusive rights does not carry out the production of certain goods. As a result, other interested parties are unable to register thier trademark as owner of the exclusive rights has a class of some commodity

[2] Bogdanova E. Interest of a person in early termination of trademark protection // Intellectual Property. Industrial property. 2013. № 8. p. 6.

[3] Mikhailov S.V. Category of interest in the Russian civil law. M., 2002, p. 177-191.

[4] Oqyulov O. Theoretical and practical issues of legal status of Intellectual property. / Responsible editor: X.Rahmonqulov. T.: TSUL, 2004. – p. 158.

[5] T. Hart, L. Fazzani and S. Clarck. Intellectual Property Law. Hampshire: Palgrave Macmillan Law Masrers, 2009. p. 102

[6] Metlyaev D. The interest in the affairs of non-use of trademarks: admit, can't refuse // Intellectual Property. Industrial property. 2015. № 1. p. 48.

products, the production capacity of the production of goods produced. This is a priority to the earlier trademark which has been recognized as the same or similar characters associated with the condition. So, of course, this means the owner of the exclusive rights will be entitled to apply to the appropriate state agency to cancel this trademark.

If we examine the law-enforcement practice, the majority of the class will not be canceled because of not manufacture but because of certain goods not manufactured in the class, can be seen partially canceled. In particular, intellectual property rights by the Court of the Russian Federation № SIP-449/2013 is [7] partially satisfied. According to the content of the work, trademark "FIRE & ICE" was used only for the production of alcohol products like "brandy". It was prohibited to produce vodka, whiskey, wine, rum and liqueur under this trademark. As a result, other interested parties and the owner of the exclusive rights who used the trademark "FIRE & ICE" for the production of vodka, whiskey, wine, rum, and liqueur stopped the implementation of the activities of the production of such products.

That is why, the rules of the third part of article 25 of the Law of the Republic of Uzbekistan "On trademarks, service marks and names of places of origin of the goods" (August 30, 2001) "… in accordance with the application of a person interested on the basis of the decision of the court can have partial liquidation ahead of schedule" can be understood as a partial rejection, to cancel the trademark with regard to exclusive rights, in the event of the nonuse of the registered trademark within five years.

One of the identifying features of the property rights from the exclusive rights is specified in the first part of article 1104 of the Civil Code of the Republic of Uzbekistan. In accordance with the Article 1104 of the Civil Code of the Republic of Uzbekistan, in case of nonuse of a trademark without good reasons at all times during five years, its registration may be cancelled by request of any interested person. Today, the importance of implementing this provision can be reflected in the dollowings: economic relations are constantly developing, increasing the volume of production of a range of goods in the same class, as well as other persons having priority in practice with the same or similar trademark registration or protection from refusal. In these cases, it would be appropriate to change the 5-year term under article 1104 (of the Civil Code of the Republic of Uzbekistan) to 3 years.

Based on the above, the followings are the factors which show the interest of interested (concerned) person in the trademark:

- product is manufactured under the trade mark (the hanging of trademark as advertisement, for the conclusion of sale-purchase agreement);
- provision of required technology of interested person the legal and physical persons (individual entrepreneurs) for the production of the product under the trademark;
- submission of the application, with the evidence, to the appropriate state agency;
- display of to which trademark is given the evidence;
- the most important, conclusion of expertise examination which shows the entity's dominant position in the proposed trademark before the goods with the same or similar features.

[7] Decision of the Court on Intellectual rights dated 17.04.2014 case № SIP-449/2013

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The role of the chamber of accounts in the implementation of the state financial control: The experience of Uzbekistan

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Abstract
The article analyzes the status of the Accounting Chamber of the Republic of Uzbekistan, the basic functions of the Accounts Chamber of the Republic of Uzbekistan on the implementation of the state financial control. We consider the current legislation of the Republic of Uzbekistan, which regulates Accounting Chamber in particular, the article examines the Budget Code of the Republic of Uzbekistan.

Keywords: the Account chamber of Republic of Uzbekistan, state financial control, the State budget, monitoring, independence, objectivity

Introduction

In a democratic state, where the source of power is the people, the formation and functioning of the audit chambers subordinate to the needs of the whole society in the control of the financial activity of the state, the performance management of public finances entrusted to it. Organized thus counting chambers of budgetary control, remaining the state, it becomes at the same time the control of the public (national) and acquire considerable authority.

History of the Accounting Chamber as a body exercising control over the budget has more than 750 years. Even in 1256 in the annals of Louis IX referred to the work of the commission engaged in the financial statements for submission to the king. In 1303 when Felipe IV, the Accounting Chamber was founded in Paris, and in 1320 Philip V issued a decree according to which the priority of the Accounts Chamber gets control over public revenue [1].

Modern Institute of counting chambers is his record since 16 September 1807 when France was signed into law on the establishment of the Accounts Court (La Cour des Comptes), it is more accurately translated as the name of the new institution of state financial control, established by Napoleon. The Audit Chamber was then centralized institution, to establish which was the emperor informed about the state of public financial accountability [2].

FROM even the House as a special state institutions perform a significant social function - to ensure effective control over the finances of the state. It is in these bodies shall be responsible for auditing government revenue and expenditure, to ensure the financial integrity and accountability of the state system, as well as other functions related to the external state financial control [3].

The most important question for the audit chambers associated with the functions they perform - this is a question about the status of the Accounting Chamber. Currently, there is an ambiguous interpretation of the Court of Auditors the status of the system of government, to be exact - which of the branches it pertains, or as a separate structure exists. The most common is the consideration of the Court of Accounts as the bodies ensuring the realization of the control function of the legislative power, because within its structure.

Declaration monitoring guidelines adopted by the International Organization of Supreme Audit Institutions, declares independence as the main principle of the activities of Supreme Audit Institutions. Supreme Audit Institution's independence should be guaranteed by the constitution, the law and to allow it to operate with a high degree of initiative and autonomy. Provisions of the Supreme Audit Institution relationship with the Parliament should be determined by the constitution [4]. Chairman of the Chamber of Accounts of France Philip Segal also believes that the status of the Accounting Chamber as an independent body, enshrined in the Constitution, is an important principle and key to an impartial monitoring [5].

Thus, there are two points of view, according to the first counting chambers are specialized bodies exercising state financial control in parliament, and therefore belong to the legislative branch. A certain logic in this, because Parliament consists of the representatives of the people, who should be in charge of where public funds are going. Even historically the control function of the Parliament appeared before the legislative as well as an organic consequence of the nature of parliamentary representation. In the course of political struggle even in 1215 the barons and top management forced English King John to sign the Magna Carta, according to which no tax is charged without the consent of the Council of the Kingdom (the prototype of the House of Lords), finding thereby control of the royal expenses [6]. According to the second opinion the

1 LM Samoilov Chamber of Accounts of France: 200 years of independence \\ Financial Law. 2010. №3. S.10- 13.
2 Barilari A. Les controles financiers comptables, administratifs et juridictionnels des finances publicies. Paris, LGDJ.2003.P.110-115.
3 Rodionova B.M, Shleynikov V.I. Financial control. M. 2002. S. 60.
4 Legal regulation of the state financial control in foreign countries // Analytical review and compilation of regulatory documents. M.1998. S. 42.
5 L.M. Samoilov Chamber of Accounts of France: 200 years of independence \\ Financial Law. 2010. №3. S. 10- 13.
6. Kovryakova E.V. Parliamentary oversight: international experience and Russian practice. Gorodets. 2005. P.5.

Accounting Chamber is an independent body.

However, all the researchers are unanimous in the opinion that the Accounting Chamber of control object up budget, all questions of planning, storage and disposal of public finances [7].

We believe that the status of the audit chambers must be independent, and these are the bodies that should not apply to any branch of government. In Uzbekistan, the Chamber of Accounts is an independent Supreme Audit Institutions, independent and objective in their assessments, monitoring and public oversight over the targeted and effective execution of the State Budget of the Republic of Uzbekistan. In accordance with Art. 78 of the Constitution of the Republic of Uzbekistan, the Chamber presents an annual report to the Legislative Chamber and then the Senate of the Oliy Majlis of Uzbekistan. The Constitution of the Republic of Uzbekistan does not establish that the Audit Chamber refers to the legislative branch. Chamber of Accounts in its activity is accountable to the President of the Republic of Uzbekistan, Chamber of Oliy Majlis of Uzbekistan.

The independence of public authorities with a special status is manifested in their institutional isolation in the organization of the government, non-interference in the exercise of their powers, effective and comprehensive financial control of public funds. Therefore, we believe that the Accounting Chamber of the Republic of Uzbekistan has the status of an independent specialized body which exercises control over public finances.

In accordance with the Budget Code, in the terms of reference of the Audit Chamber of the Republic of Uzbekistan in the field of budgetary relations is to represent the Cabinet of Ministers of Uzbekistan opinion on the draft State Budget of the Republic of Uzbekistan; implementation of the external audit and assessment of the annual report on execution of the State Budget of the Republic of Uzbekistan and budgets of state trust funds and submission to the Cabinet of Ministers an opinion on them and other powers. The Accounts Chamber of the Republic of Uzbekistan is endowed with wide powers in the sphere of budgetary control. The budgetary powers of the Accounting Chamber enshrined in Article 26 of the Budget Code [8]. The leading role of the Accounting Chamber in the fight against corruption is: the development and implementation of financial control over the observance of legislation, the monitoring of corruption offenses [9]. The powers of the Accounting Chamber in the state financial control are envisaged in Article 174 of the Budget Code. Among them is the most significant: the control over the execution of the expenditure part of the State budget; analysis and study of variations in the budget process [10].

Analysis of the current legislation allows us to consider the Accounts Chamber of the Republic of Uzbekistan as an independent state body with special status, ie, body, not directly included in any of the three powers. This is consistent with modern trends of the independence of budgetary control institutions under international law and experience of foreign countries with developed financial control system. The priority directions of activity of the Accounting Chamber should include surveillance, monitoring and analytical work related to financial controls carried out by it.

In this way, during its operation of the Accounts Chamber of the Republic of Uzbekistan has proved to be an effective body responsible for budgetary control and has taken its rightful place in the mechanism of the state as the Supreme Audit Institution. During the global financial and economic crisis, the authoritative international organizations, in particular the United Nations, for the first time turned his attention to external financial control, and recommended that all States - UN member states to adhere to international standards in this area. And one of the most important international principles INTOSAL is to guarantee the independence of financial control body at the level of the Constitution and laws. The Accounts Chamber of the Republic of Uzbekistan is the most important specialized body exercising budgetary control. The Audit Chamber has already established itself as a central institutional structure, has control over the proper spending of the state budget. But in the future its activities will certainly be improved.

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Civil-law problems connected with obligatory drawn contracts

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Abstract
The problems of civil-law connected with obligatory drawn contracts were analyzed in the article as well as the suggestions about contracting and development of them was given.

Keywords: free contracting, contract, compulsory contract, drawing an agreement, the stages of drawing up agreements, consideration and signing the contracts, contract archiving

Introduction

The principle of freedom of contract is one of the most important rules of the civil legislation of the Republic of Uzbekistan, based on market relations. Freedom of contract as a basis of civil legal documents was reflected in article 1 of the current Civil Code of the Republic of Uzbekistan as well as the freedom of contracts is harmonious with the initiative of participants of market economic relations, with ample opportunities given to them and freedoms, with the rules of civil law ordering as non-interference in the part of the activities, such as the laws of market supply and demand, competition. At the same time, freedom of contract is particularly important in the development of entrepreneurship, providing opportunities to small businesses and legal safeguards.

Freedom in the preparation of contracts and in the choice of the form drawn up by the contracting parties of legal relations is enshrined in Article 8 of the Civil Code of the Republic of Uzbekistan. According to him, the civil rights and obligations arise from treaties and other agreements provided for by law, and treaties and agreements, not provided for by law, but not contrary to it. For this reason, the choice of types of contracts and, in general, with the expression of the desire to make the contract and enter into a contractual relationship, the parties entering into a legal relationship are free.

The content of the freedom of contract is reflected in article 354 of the Civil Code of the Republic of Uzbekistan, according to which citizens and legal entities in the preparation of contracts are free.

According to Professor I.B. Zokirov the principle of freedom of contract can be understood by highlighting three positions:

1) Freedom of choice of the subject of his counterpart, that is a partner in the contract;
2) The freedom to choose the subject of the contract, that is the state of adoption of the treaty;
3) Freedom of choice of the contract conditions.

The implementation of these three provisions in relation to the subject should not exert any improper influence [1].

A.N.Tanaga gives the following definition of the principle of freedom of contract: the freedom of contract - directly enshrined in law the primary basis for civil law, which determines the freedom to create contracts, freedom of choice of species is freedom of contract and determining the terms and conditions for the subjects of relations contracts [2].

According H.R.Rahmonқulova freedom of contract leads to the existence of the true desires and will of the parties in entering into a relationship agreement. This will is manifested primarily in the actions on drawing up the contract, and secondly, in the act of determining the conditions of the contract, in the third, the actions to fulfill the contract obligations [3].

According to part 2 of article 354 of the Civil Code of the Republic of Uzbekistan is not allowed forced drafting of the contract. Cases duty of drawing up the agreement in the cases provided for in this Code and other laws or the commitments are the exception.

According H.R. Rahmonqulov, according to the legislative documents in force at the time of the socialist system, the composition of many contracts are required. State, cooperative, public organizations were required to make a corresponding agreement. This commitment, first of all, arose on the basis of planned targets. Existing civil legal documents also suggest drafting contracts compulsory. However, the legislation of the modern system is very different from the law of the former system. Drawing up of contracts compulsory by law only in specific cases established [4].

R.Kniper about drawing in the CIS agreement on a mandatory basis considers that the establishment of the Civil Code, along with the freedom of contracting is not without reason restricts these principles and the restriction in the first place, which is carried out in terms of social protection and consumer protection. At the moment, the legislation of some countries, such as the Civil Code of Georgia and Moldova, established the compulsory contracting for leading at the enterprise market, and other relevant circumstances, the civil laws of other CIS countries have established rules for drawing up the agreement on a mandatory basis in accordance with the Civil

1 Zokirov IB Civil law. Textbook. -Tashkent. TSIL, 2009. Part 1. -384 With.

2 Tanga A.N. The principle of freedom contract civil law of Russia.- St. Petersburg. Press Law Center. 2003. - P.39.

3 Rahmonqulov H. with descender. Liability law. Text book.- T.: TGYUI.2005 - p.227.

4 Rahmonqulov H. with descender.Liability law. Text book.- T.: TGYUI.2005 - p.253.

Code of the CIS model [5].

Indeed, the introduction of compulsory drafting in the exceptional freedom of drawing up the order contract determines the mandatory preparation of contract with respect to one side or two sides. Mandatory drawing up of the contract gives rise to organizational and legal relations and the emergence of such a relationship, their content and the conditions for their implementation are reflected in the Civil Code.

According to N.D. Egorova, a procedure for drawing up the contract according to the law is used when drawing up a contract for one of the parties be sure, that is when you should make a binding contract [6].

Organizational and legal relationship with the compilation of the contract is mandatory, the draft treaty origin, its adoption and the administration of response, changes in the conditions provided for in the draft treaty or organizational processes associated with the rejection of the formation of the contract are reflected in article 377 of the Civil Code of the Republic of Uzbekistan. According to part 1 of this article, according to this Code or other laws, in cases where a party has sent an offer (the draft agreement) is required to draw up a contract, the other party within 30 days should be direct awareness (disagreements protocol with the draft treaty) on the acceptance or rejection of the acceptance of the offer or the acceptance of other conditions.

According to E.S. Kanyazov, when drawing up a contract for a party that has sent the offer (the draft contract), is mandatory, the other party within 30 days is required to send the notice. This is performed in the following forms:

- Notice of acceptance;
- Notification of non-acceptance;
- Extension of the requirements of the treaty-based requirements, which differ from the requirements proposed by the acceptance of the offer. However, this notice, in contrast to Article 375 of the Civil Code says abuse of acceptance. In this case, together with the draft sent to the seller signed the protocol disagreements [7].

In this sense, joining E.S.Kanyazov opinion it should be noted the absence of a logical connection between the rules of Article 375 of the Civil Code of the Republic of Uzbekistan and the Article 377. The reason is that in Article 375 of the Civil Code stated the rule that "the answer of the agreement on the basis of drawing up the contract conditions that differ from those offered in the offer are not considered to be an acceptance. Such a response is a refusal to accept at the same time a new offer. “In the same article 375 of the Civil Code of the Republic of Uzbekistan provides for the administration of disagreement with the protocol agreement signed by the project in accordance with Part 2 of Article 460, determined by the rules of the stages of drawing up a binding contract and, in this case, the parties decide on organizational matters relating to possible changes in the relevant project. In addition, Article 375 of the Civil Code requires rules on the stages of drawing up the contract, as Article 377 of the Civil Code sets the rules "drawing up of the contract is mandatory", is an exception from the normal procedure for drawing up the contract. Therefore, in order to ensure mutual consistency and eliminate contradictions between them should introduce a rule "are the exception rule of Article 377 of the Code." This will serve as the correct use of the rules of the Civil Code and prevent groundless conflicts between the parties.

It should be noted, preparation of contracts is a mandatory organizational and legal relations and to acquire property hue. The aim of such relations is to generate in the future contractual relationship with the property shade and execute the contract. Typically, such a procedure for drawing up a binding contract does not apply to all types of binding contracts and binding agreements that do not use this procedure, organizational relationships do not occur. For example, when drawing up the contract of retail dealer, has a massive contract and engaged in ongoing business and customer need for such a procedure is not felt. The reason is that the implementation of the retail sale contract, despite the fact that it is necessary for the seller, in many cases, carried out immediately after the preparation and, at the same time the administration of the offer waiting in within 30 days of acceptance, and other organizational issues are not observed. Therefore, to talk about the preparation of all types of "compulsory agreements" mandatory and include them in the number of contracts drawn up by a mandatory, it would be wrong. As the "preparation of the contract is mandatory" and "binding contract" - differing legal reality and they should be analyzed separately.

In this sense, the inclusion of some of the authors of the mass of agreements aimed at protecting consumers' interests in a group of contracts, drawn up by a mandatory [8] From the point of view of logic, not advisable. This agreement (the massive contract), despite the fact that it is considered essential for one of the parties is required, the procedure for its preparation was not based on Article 377 of the Civil Code rules. Contracts of this type (bulk agreements) prohibited by law at first to accept the conditions of party providing the goods, works and services, and then refuse to side in drawing up the contract. And drafting of the contract, usually carried out on the basis of the rules laid down in the preparation of contracts. In drawing up the agreement on a mandatory basis, the contracting parties shall be established in advance, and based on this, one side or two sides of the contract are forced to draw up a contract. For this reason, they should discuss the organizational and legal issues related to future legal relations, the responsibilities entrusted to them, and rights. This gives rise to organizational and legal relations and property relations agreement between them and the content of the contract and questions on registration.

For example, in the Charter, approved by Decision № 383 of the Cabinet of Ministers dated September 4, 2003 "On the procedure of drawing up contracts between the producers of agricultural products and billet, service organizations, their registration, execution, and monitoring of their implementation" set the direct order of drawing up contracts in preparation, processing and purchasing of agricultural

5 Knieper R. Development of civil codes in the CIS. / 10 years of the Civil Code of Uzbekistan's experience and perspectives development.-T. KONSAUDITINFORM-NASHR, 2008. - P.28.

6 Civil law. V.1. // Pod.red.A.P.Sergeeva, Yu.K.Tolstogo.-M. Prospect, 2003. - P. 607.

7 Comments of the Civil Code of the Republic of Uzbekistan. Tom-I-T. Vektor-Press, 2010. - 782 pp.

8 Rahmonqulov H. with descender.Liability law. Textbook. T:. TGYUI.2005. - S.255-257.; Knieper R. Development of civil codes in the CIS. // 10 years of the Civil Code of Uzbekistan's experience and perspectives razvitiya.-T: KONSAUDITINFORM-NASHR, 2008. - P.28.

products. According to the Charter, the drafting of contracts of contraction carried out directly in the farms. Contraction contract, as the contract on the delivery of material and technical resources and the provision of services (works) based on the volumes set out in the business plans of farms, should be made one month before the beginning of agricultural activities, but no later than the beginning of the calendar year.

When drawing up the contract originator sends his responsible representative in the economy. The compiler has the right to send through the mail in the economy of contraction draft contract, if the parties are in different fields and agree to draw up a contract.

Since the compiler representative visit the farm or from the receipt of the draft treaty by mail within 7 days of the contract must be signed and returned to the originator. In the case of objection to the occurrences of farms over the requirements of the contract, the economy in the same period of disagreements and sends the originator signed contract in duplicate.

After the compiler will receive disagreements, within five days, he is obliged to make proposals received for consideration, in the same time frame for consideration of conflict situations is obliged to submit to the appropriate economic court. The contract is prepared and signed in triplicate. Wood and service organizations provide to the District Department of Agriculture and Water written contract for registration within three days after the drawing. When you register you can not request additional documents or pay.

If the agreement meets the requirements of the district department of agriculture and water management registers it in the prescribed manner. In the case of non-compliance with the established requirements of the contract, the decision to refuse registration. In case of cancellation of registration of the contract, billet and service organizations, eliminating defects, shall, within three days to provide it again.

It can be seen that the preparation of the contract kontraktatsionnogo carried out according to the rules for a mandatory contract, laid down in Article 377 of the Civil Code, the special rules of the Constitution and raises a number of organizational and legal relations. Organizational work to be implemented by the Parties in the preparation of kontraktatsionnogo contract and the timing of their implementation are set out in Annex 1 to the Constitution and the application is called the "phase of the contracts between the producers of agricultural products, billet, service organizations, their registration." These steps are in the form of the following table:

Stages of preparation of contracts between producers of agricultural products, billet, service organizations, their registration

Steps	Events	Deadlines	Responsible persons
Stage 1	Preparations for drawing up contracts	One month before the start of farming activities	Wood, servicing and other organizations
2-stage	Review and signing of contracts	Within 7 days	Agricultural enterprises
3rd step	Delivery contracts for registration	Within 3 days	Wood, servicing and other organizations
4-Stage	Registration of contracts	Within 3 working days	Departments of Agriculture and Water Resources
5th step	Issuance billet contracts, servicing and other organizations after registration	After registration in 1 day	Departments of Agriculture and Water Resources
6th step	Issuance of farms registered contracts	After registering for 2 days	Wood, servicing and other organizations
Stage 7	Storage contracts	After all the requirements of the contract for 3 years	Wood, servicing and other organizations, departments of Agriculture and Water Resources of Agriculture enterprise

From these steps it is clear that the drawing up of contracts necessarily carried out only in the form of organizational and legal relations and their aim is not the formation of a specific value or a product of the amount of material, and the execution of the intangible nature of the actions.

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Comparative analysis of modern foreign legislation on the right to building

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Abstract
This article examines the characteristics of regulatory law in the countries of continental Europe and some countries in the post-Soviet area. Based on the conducted analysis some differences and similarities in the formation of this institution in the Romano-Germanic legal family are revealed. Theoretical recommendations on introduction of the positive experience of these countries are developed to improve national civil law.

Keywords: rights in things, real estate, limited real rights, servitude, right of ownership, contract, a plot of land, builder, building

Introduction

Rights in things are an integral part of the civil laws of any developed nation. In domestic civil law science and legal system, in general at least, all property rights referred to the right of ownership for a long time. Their present renaissance occurred in the last decade of the last century, when the newest codification of civil legislation became a complex and extensive system of property rights, consisting of a set of interrelated elements.

At the same time, the world and domestic practice of law enforcement suggests that the legislative formulation of property relations concerning possession, use and disposal of a plot of land cannot be reduced solely to the right of ownership. In this regard, in condition of development of market relations the institution of limited real rights to the land, providing the opportunity of realization of rights to land plots owned by the right of ownership to others is crucial.

In connection with the process of development and improvement of civil legislation of Uzbekistan at the present stage there is a need in studying experience of legal regulation of limited real rights to the land in foreign countries.

Features of regulation of limited rights in things in continental European countries are of great interest to us, due to the historical relationship of the legal system of Uzbekistan and the countries of the Romano-Germanic legal family. It should be noted that the development of the category of limited real rights to the land in continental Europe is the result of centuries of evolution of their legal system and this indicates complexity of the process of formation of the designated categories of rights.

Since the current civil legislation of the Republic of Uzbekistan does not provide the right to building as an independent property right to land, the experience of foreign countries in the field of regulation of relations connected with the right to building deserves a special attention in the research of the institute of rights to building, as it allows to reveal its legal entity, characteristic features of it.

In this paper, the following legislation of foreign countries was selected for comparative analysis:

- German law, the system of real rights to the land which is formed under the influence of pandect law in force in Germany in the xvi-xix centuries;
- Legislation of Austria and Switzerland on real rights to land, similar to the German system of real rights, as well as more Romanized legislation of France and Italy [1];
- Legislation of the former soviet socialist republics: Russia, Estonia and Ukraine, representing an independent direction in the formation of the real right systems [2].

It should be noted that the legal construction of rights to building in Germany is of great interest, since the legal tradition in Germany is especially close to our legal system.

In foreign legal systems provisions of the right to building are set as special laws (in Germany the Regulation on the Law of Succession of Building of 15 January 1919 [3], in Austria the Law on the Right to Building of 26 April 1912 [4], in Estonia, the Law of Property Act of 9 June 1993 [5]) and codified regulatory enactments (in Switzerland [6], Italy [7], France [8], Ukraine [9]).

The content of the hereditary rights to building under the laws of Germany is that the right to a plot of land can be limited, so that the one in whose favor the limitation is carried out enjoys alienable and hereditary right to have the structure above or below the surface of the land (§ 1 of the German Regulation on Succession of Building Rights).

Similarly worded definition of the right to buildings is provided in § 1 of the Law of Austria on the Right to Building and in paragraph 1 of Article 241 of Estonian Law on Rights in Things. It would be interesting to note that these features of the right to building, characteristic of Roman superficies as transferability and heritability, according to Swiss Law may be excluded by the parties while making an agreement on the establishment of the right to building. Paragraph 2 of Article 779 of the Swiss Civil Code states that if the contract does not specify otherwise, the right to building is an alienable and inheritable.

The mentioned provision, as I believe, is because that Swiss law considers the right to building as a kind of personal servitude along with such rights as usufruct, right to residence, right to access to drinking water sources. Personal servitude does not attribute alienability and the possibility of their transfer by inheritance, as traditionally, personal servitude belonged to a particular person individually [10], consequently, could not be transferred or pass to another person by inheritance. Perhaps, following the classical

principle of alienability and impossibility of transfer of personal servitude in a hereditary way, determining the right to building as a kind of personal servitude, the Swiss legislator provided contracting parties with the right to exclude the alienability and heritability of rights to building [11].

Unlike Switzerland, in other laws of foreign countries being investigated, the right to building serves as an independent kind of rights, and does not apply to other kinds of real right.

According to the legal nature of the law of considered states, the right to building is a limited real right to somebody else's land. At the same time for German researchers the right to building features dual building rights: on the one hand, this is a limited real right, on the other hand, the encumbrance of plot of land [12].

The grounds of emergence of the right to building and characteristic features of the right to building will be considered.

The basis for the initial establishment of the right to building in accordance with the legislation of all considered countries in this article is an agreement on the establishment of the right to building. The Civil Code of Ukraine and, in addition to the agreement on the establishment of the right to building, allows the possibility of introduction of the right to building on the basis of the will (Clause 1, 4, Article 413 of the Civil Code of Ukraine).

In most other countries the right to building is urgent. However, in Italy, Estonia and Ukraine the right to building could be granted for an indefinite period [13].

In characterizing the right to building an important issue is to determine the nature of the right to building constructed on the basis of the right to building [14].

Analyzing the nature of the right to building constructed on somebody else's plot of land, according to German law, first of all, it should be noted that in Germany, the only object of real estate is land [15]. At the same time as a general rule anything that is positioned above and under the site, follows the fate of the land (§ 93, § 94 of the German Civil Code).

Objects located above or under the land are in a legal relationship with the land, the content of which depends on the type of right, according to which an object on or under the land, nature and purpose of the construction of the object (permanently or temporarily) appear [16].

I.A. Emelkina refers to three categories of objects:

1) The essential components of land, which include things strongly bound to the ground, particularly buildings, as well as "land food" while they are connected with soil (it is important to note that these parts cannot be subject to separate rights); and the rights associated with ownership of the land, including the hereditary building rights;
2) Temporarily attached items, which include things related to the land only for temporary purposes ("the imaginary component"), as well as structures or objects, built on a land plot of by an eligible person while exercising the right to somebody else's land (in property law building obligations or lease right). The legal regime of "imaginary components" as a general rule is equal to movable things;
3) Belongings of land, which are movable things and not components of the main thing, serve its economic purpose and thus "are spatial relations with the main thing." the belonging of land should have a common destiny with the main thing.

Researching the limited real rights to land, and in particular the right to building, I.A. Emelkina indicates that the nature of the right to building, constructed on somebody else's plot of land, has long been a subject of discussion of German scientists. As the author notes, in Germany the following theory of a possible qualification for the right to building can be highlighted:

- Separated property;
- Right of use like a landed servitude;
- Rule of forced use of property;
- Special ownership of building [17].

According to the theory of property and shared ownership, the ownership of the land and the ownership of building are divided as follows: the supreme ownership belonged to the person who receives the rent, and the subordinate ownership belonged to the other person. With regard to the right to building shared ownership theory has been rejected due to the refusal of supreme and subject property by the pandectists [18].

The reasons for refusal of recognition of rights in things or personal servitude are as follows:1) a servitude is established if the dominant and official plot of land, which is not necessary in determining the right to building; 2) a servitude has a broader content, whereas on the basis of the right to building the land can only be used for the construction of the building and its subsequent exploitation; 3) a servitude – a strictly personal right that cannot be inherited, and it is not alienated, as opposed to inherited and alienated right to building [19].

Application of the theory of enforcement is impossible, as "the right to building grants the right to use the land, and the owner's requirements for the builder are provided by the other right – a pledge of property" [20].

The theory of the recognition of property rights was rejected because the grounds "that it is contrary to the state of changing of structure into a plot of land, accordingly, on the grounds of impossibility of presence of two rights for the owner" [21].

At the same time, the approach that the builder has a special ownership of the structure was the basis for the formation of modern theoretical design and building rights in Germany [22].

The essence of this construction is as follows: (1) constructing for the duration of the right to building is recognized an essential part of the right to building, which is an exception to the general rule, according to which the structure is an essential part of the land, and (2) the real estate regime extends to the law of building, which allows transferring the right to building to the mortgage.

It should be noted that some scholars differently explain the reasons for relating a construction, built on the basis of the right to building, by German law into a category with the essential part of the right to building for the duration of the right to building.

E.A. Leonteva points out that such a decision associated with the fact that the legislator gives preference to the interests of the owner of the buildings before the interests of the land owner [23]. Extension of the legal regime of a substantial part to somebody else's things connected with the plot of land would appear legitimate injustice [24].

According to I.A. Emelkinoy, structure erected on the basis of the right of the building is considered an essential part of the

right to building to eliminate the recognition of the structure of movable property, by virtue of the provisions of that building in a strange land acquires the status of movables (as happens when renting). The recognition of the structure as a movable property would prevent the possibility of transferring the structure to obtain a mortgage and construction lending [25].

E.A. Sukhanov justifies a rule provided by § 12 of the Law on the German Regulation on building succession saying that the building erected on somebody else's plot of land on the right to building, it is considered an integral part of the law, but not a plot of land as follows: "This exemption from the general rule was made intentionally in order to develop housing construction after World War I, in condition when the developers could not buy land plots in their property due to their high cost, but also did not want to pass their constructed houses in the property of landowners" [26].

Following the model of German law the fate of the building, which is built on the basis of the right to building, is determined in Austrian, Swiss and Estonian Law. Despite the fact that, unlike German Law, in these countries there is no clear division of objects located on the plot of land and under it, the significant components and temporarily attached things, nevertheless similar to German law:

- A plot of land is considered as a single real estate object;
- As an exception to the general rule, according to which the building erected on the land plot is a part of the land plot, during the period of the right to building a structure is considered to be an integral part of the right to building, but not the land plot (This exception causes another exception to the general rule, according to which everything that is located on or under the land plot, belongs to the owner of the land [27]);
- As a result of legal fiction of permitted by the legislator the real estate regime extends to the right to building [28].

Thus, according to the laws of Germany, Austria, Switzerland, Estonia, a structure, being a part of the right to building, follows its legal destiny and in the case of alienation, mortgage and civil circulation is not involved as a separate legal object.

On the contrary, according to the laws of France, Italy, Ukraine, a building erected on somebody else's plot of land on the basis of the right to building is an independent legal object. Moreover, being an independent subject of law, this structure is in the period of the effect of rights to building.

Upon expiry of the right to building, as established by a peremptory norm of clause 3, § 12 of the German Regulation on the hereditary right to building erected by builder, the building becomes a part of the land, and the owner of the land plot by the principle of increment the right to building ownership constructed on his land plot emerges. This imperative norm is also provided by the legislation of Austria, Switzerland, and Italy.

French legislation does not prescribe mandatorily transfer of ownership of the building erected on the right to building to the owner of the land at the termination of the right to building, and allows the parties to agree otherwise. This legislation does not specify what other variants of the fate of structure parties may provide. In the event that contracting parties do not set out the legal consequences of the termination of the right to building in the contract, at the end of the right to building, the building erected on the basis of the right to building, in my opinion, becomes the property of the land owner by virtue of the established increment principle in the legislation of France. As in other countries under consideration, the French rule establishing the principle of incremental makes it an exception for the period of the rights to building, without providing ownership of the building erected in the force of building law to the owner of the land.

Pursuant to Estonian law, the fate of structure is determined not by the two parties to the contract, but only one party - the owner of the land, which decides whether or not after the expiration of the right to building the structure is transferred to the owner of the land for appropriate compensation or structure is subject to dismantling and removal. As we can see, in Estonia options for possible legal consequences of the termination of the right to building are legally established.

It is interesting to note that neither of these two options of consequences of termination of the right to building does not allow for the transfer of ownership rights to the builder by the force of the right to building. The specified thing seems logical. Exceptions to the general rule, according to which the building located on the land is an integral part, as well as the rule that establishes that all located on or under the land is the property of the person who owns the rights to land, are allowed by Estonian legislation only for the period the term of the right to building. Upon termination of the right to building the building becomes a part of the land, and by virtue of the principle of incremental the owner of the building on the land can only be the land owner.

The fate of buildings upon expiry of building rights is ambiguously defined in the Civil Code of Ukraine. Parties have the right to determine the legal consequences of the termination of rights (Paragraph 1, Article 417 of the Civil Code of Ukraine), moreover, based on a literal interpretation of the rule, not at the conclusion of the agreement on the establishment of the right to building, and in the event of termination of the right to building [29].

It seems that the establishment by the law the consequences of termination of the right to building through a peremptory norm (like German, Austrian, Swiss, Italian laws) or through a dispositive norm, but with an indication of a closed list of possible legal consequences of the termination of the right to building (such as Estonian law) best meets the purposes of the stability of civil circulation and observance of the rights and legitimate interests of both the land owner and builder.

In cases when the building erected on the basis of the right to building, after the termination of the right to building becomes the property of the land owner, the question whether the owner of the land has to pay any compensation for the building to the builder arises.

In the legislation of Germany, mandatorily established obligation for the owner of the land to pay the builder at the termination of the right to compensation for the construction erected by them on the right to building of construction. Similar provisions are provided in the legislation of Austria and Switzerland. At the same time in Germany (for residential buildings) and Austria (in the case of buildings of any purpose) legislated even the minimum amount of such compensation.

The legislation of Ukraine and Estonia gives the parties an opportunity to determine the presence or absence of the obligations of the owner of land to compensate the builder for

the building on somebody else's plot of land at the termination of the right to building, as well as to independently determine the amount of such compensation [30] and the form of its payment.

Meanwhile, in Italy and France, there is no provision for compensation for the buildings constructed based on the right to building, the transition of ownership of the building to the owner of the land on the expiry of the right to building. It seems that the mentioned state, however, must not exclude the possibility of establishing such compensation by agreement of the parties.

Upon termination of the right to building in addition to the question of the fate of the buildings erected by virtue of the right to building the question whether the builder has the preferential right to sign the agreement on the establishment of the right to building for a new term arises. This problem is solved in different countries differently.

Thus, in German legislation, as well as in Estonian one, special laws on the right to building it is indicated that the parties can provide preferential right of the builder to make an agreement on establishment of the right to building for a new term. In Germany, the procedure of exercising a preference for the builder to make an agreement on the establishment of the right to building a new term is regulated at the legislative level in the Regulation on the law of building succession, and under Estonian law procedure of such a right is established by agreement of the parties.

The legislation of other countries considered in this paper contains no mention of the possibility of establishing a pre-emptive right of the builder to extend the right of building for a new term. This mentioned state, however, does not limit the possibility of parties to the agreement on the establishment of the right to building to provide a pre-emptive right and the procedure for implementation of the agreement concluded on the establishment of rights to building.

Taking into consideration the situation that the right to building is provided, as a rule, for a long term absence of the rules on preferential right to make an agreement on establishment of the right to building for a new term at the legislative level, as well as rules on the procedure of the implementation of this right can be explained as follows. Upon the expiry of the term of the right to building, often constituting 99 or 100 years, perhaps this kind of change of circumstances in which fulfillment of obligation of the owner to extend the term of the agreement could put it in a very disadvantageous position. This conclusion can be indirectly confirmed by the fact that, as previously noted, according to the legislation of most countries, the right to building is urgent, lest the land was burdened with the right to building indefinitely.

Permanent right to building almost always deprives the owner of the land of owning and using such a plot of land. However, it is not allowed to neglect that the urgency of rights to building, may also serve as not only a reasonable deadline for the encumbrance by rights to building, but also a term of service of buildings.

Summarizing the above sources, it should be noted that the model of rights to building in the legislation of Austria, Switzerland, Estonia, is provided in much the same legal bases of the hereditary rights to building in Germany.

The generality of the legislative provisions on the right to building in these countries is reflected in the following.

1) For the duration of the right to building the structure built through the power of the right to building is an integral part of the right to building and, accordingly follows its legal fate;
2) The regime of real estate is applied to the right to building which allows transferring the right to building, including its component – the building to the mortgage as an object of real estate.
3) Upon termination of the right to building, construction erected by virtue of the right to building, becomes a component of the land plot (in Estonia, however, the land owner may require the builder to demolish the building).

Legislation of France, Italy and Ukraine, in contrast to the legislation of Germany, Austria, Switzerland, Estonia, recognizes the building as an independent object of law during the period of the right to building erected on its base, allowing for the builder to have ownership of the building.

The conducted analysis of regulation of relations connected with the right to building in Germany, Austria, Switzerland, France, Italy, Estonia, Ukraine, leads to the conclusion that of the seven countries whose legislation was considered, the most detailed regulation belongs to Germany's, but the rules of the right to buildings in French law, on the contrary, have the character of guiding principles [31].

In modern current civil law institute of the right to building as an independent right to someone else's thing is not directly mentioned anywhere. As the researchers of property rights to the land rightly point out, the current Civil Code of the Russian Federation contains a separate entitlement to building on someone else's land, included in the content of other limited rights in things [32].

In particular, Paragraph 2, Article 266 and Paragraph 2, Article 269 of the Civil Code of the Russian Federation provide the right of individuals possessing and using someone else's land on the basis of the right of lifetime inheritable possession and the right of permanent (perpetual) use of land to erect buildings on it, gaining the right of ownership of them. Thus, A.A. Makovsky notes that of these two rights to somebody else's land really existed and one single right in things – the right of permanent (perpetual) use the land exists [33].

This situation was caused by the fact that by the time of the adoption of the first part of the Civil Code of the Russian Federation transition from a planned economy to a market had not ended. The legal regime and the civil circulation of land as an immovable on the Soviet tradition was due to the nationalization of the land and the abandonment of the category of rights in things [34].

In 2009, the Presidential Council for Codification and Enhancement of Civil Legislation approved the Concept of developing civil legislation of the Russian Federation, which declared the need for interconnected institutions of property law in the Civil Code of the Russian Federation, expanding the range of limited rights in things, including the right to building.

The draft law developed on the basis of the concept provides for the full perfection of the mechanism of legal regulation of real estate relations by making changes to the current version of the Civil Code of the Russian Federation. In particular, the article of this Bill contains a definition of the right to building. According to the bill the right to building is the right

of possession and use of someone else's land in order to build on it a building or structure and its subsequent operation.

Concluding the review of foreign legislation on the right to building, we note that currently this institution is not widespread in all countries.

German scientists say that the institution of hereditary building rights is currently undervalued by the state, despite the fact that, according to scientists, it could become an effective tool of the state to manage municipal land use [35], and achieve by the help of certain political and social purposes [36] (by meeting the housing needs of the needy category of the population with the provision of certain guarantees).

While the State is a major owner of land, it almost does not provide it for private individuals to possess and use based on the hereditary rights to building, the Church in Germany appears to be a significant figure in the market of the hereditary rights to building [37], making an agreement with the members on establishment of a hereditary rights to building. In German legal literature, one opinion is put forward that in Germany the common practice of presenting a plot of land to the church based on the hereditary right to building is due to the fact that churches have a huge territory and there is a ban on the sale of church lands.

The institute of Law on building in France now is not in demand. Modern researchers suggest that this situation is caused by French law providing unrestricted freedom of the parties on many issues which in other countries regulated by law. French lawyers believe that the norms concerning building rights in Housing and Communal French Code have the character of guiding principles of building [38]. The above mentioned state may be regarded by potential builders as a negative factor for long-term relationships.

In the 1990 in Italy, right of superficies was widespread for the construction with governmental support; however, as noted by the researchers of rights in things in Italy, currently Italy's public authorities are seeking to find other ways to provide housing for the needy category of the population [39].

While hereditary right to building in Germany and right to building in France and Italy are not widely used in modern civil circulation, in Estonia the institute of rights to building, on the contrary, has become one of the most popular institutions of civil law, resulting in some competition for the right to ownership, [40] which is confirmed by statistics of the Centre of registers and information systems of Estonia.

In our view, upon assessing the possibility of introducing the institute of the rights to building into national civil law, which has existed since the Roman law, and are used in various national legislation of the countries of continental Europe it should be noted that it is unacceptable to completely copy their legal structures. It is only necessary to use the principles on which this institution exist in the most developed European countries in order to improve the system of rights in things to a plot of land.

References

1. The main difference between these classifications, as I.A. Emelkina notes, is that pandectists are based not only on acquired from Roman law, but also on national institutions, created under the influence of the actual needs of life. French Italian system of real rights is based for the most part on the provisions of Roman law (see:. Emelkina I.A. The system of real rights to land in the Russian law and some foreign legal systems. // Законодательство. 2010; 12:24.
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11. It is worth noting that this exception to the general rule of not alienability of personal servitude is established by the Swiss Civil Code in respect of this type of personal servitude, as the right to access to drinking water sources. As well as the right to building, according to Swiss law, the right to access to drinking water sources is transferable and inheritable, unless otherwise provided by agreement of the parties. At the same time the usufruct and according to the Swiss Civil Code, the right of residence cannot be alienated and transferred by inheritance under any circumstances.
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13. According to the legislation of Ukraine, a plot of land of state or communal ownership cannot be granted for an

indefinite period. These lands are given for the construction for a period not exceeding 50 years.

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27. As a result, during the term of the right to building the legal fate of the land is broken in respect of which the right to building is established, and buildings erected on the basis of the right to building.
28. Austrian Law on the right to building clearly indicates that the legal regime of real estate extends to the right to building (§ 6). Article 655 of the Swiss Civil Code refers the following kinds of property to real estate: 1) plots of land and buildings on them; 2) registered independent and permanent rights to real estate; 3) mines; 4) share beyond movables. In Clause 3 of Article 779 of the Swiss Civil Code it is established that if the right to building has the character of an independent and permanent right, then it can be introduced in the land register as immovable property. Before making changes to Clause 4 of Article 241 of Estonian Law on estate, this article contained a direct indication that "the right to building is considered to be immovable." At the same time, Estonia's legislation has no provisions which would expressly provide that the right to building is real estate, but, the real estate regime is applied to the right to building in Estonia like hereditary building rights in Germany. In particular, according to Articles 123-126, paragraph 4 of Article 241 of Estonian Law on Real Estate the provision of real estate is applied to the right to building and also, the right under consideration is included to the land register along with the plot of land, the right to the apartment building and the ownership of the apartment (Article 5 of the Law on the Land Register).
29. Provision in Paragraph 1, Article 417 of the Civil Code of Ukraine stipulates that "in the event of termination of the right to use the land on which a construction is built, the land owner and the owner of the building determines the legal consequences of such termination, and if the parties fail to reach agreement, the owner of the land has the right to require the building owner to demolish the construction erected on the basis of the right to building and bring land back to the state in which it was granted. Moreover, Paragraph 2, Article 417 of the Civil Code of Ukraine establishes an exception to the general rule about the demolition of buildings unless the parties have agreed on the legal consequences of the termination of the right to building. Thus, in cases that demolition is prohibited by law (homes, places of interest of history and culture, and so on.) or significant excess of the cost of building value over the cost of the land to no purpose, the court, taking into account the grounds for termination of the right to building, can decide on the repurchase of the owner of the land where the building is placed, or the redemption of the building to the owner of land plot or determination of the conditions to use by the land owner of the building for a new term.
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Maintenance and welfare of parents and senior citizens act, 2007: A critical analysis

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Abstract
In recent times, there is phenomenal increase in population of aging. As per the report of the Situation analysis of the Elderly in India – 2011", the elderly population aged sixty years and above account for 7.4 percentage of total population in 2001. About 65% of the aged had to depend on others for their day to day maintenance. The old age dependency ratio climbed from 10.9% in 1961 to 13.1% in 2001 for India as a whole. For females and males the value of the ratio was 13.8% and 12.5% in 2001 – Hence, in this paper the authors is going to analysis the effect of the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (Act, 2007) which are enacted for the welfare of the parents and senior citizens in India- Further, the authors is going to analyse lacunas in the existing legislation.

Keywords: senior citizens, parents, maintenance, liability of children/relative, hindu, christian, muslim, act, 2007

Introduction
Indian society has a long cherished tradition to respect and protect the elders. It is the pious obligation of the siblings to maintain their parents and grandparents. The great saint Tamil poet "Avvaiyar" said *"Annaiyum Pithavum Munnari Deivam"* which means mother and father are the first God known to the children. Until few decades, in the past, these traditions, heritage and moral values were taught at the schools as part of curriculum. Since, the children learnt these invaluable tenets, in their childhood, it was not required to remind them of their obligation towards the elders, by making any law to respect and protect them. In recent years, under the guise of preparing the younger generation to compete globally in knowledge sharing and employment, we have gradually removed the moral studies from the school curriculum. On the other side of the coin, when the joint family system was in prevalence, the grandparents, in order to at-least while away their time, used to tell moral stories to their grandchildren.

"Patti Kathaigal" / "Grandmother's stories" played a major role to imbibe good qualities in the children. Now joint family system has also slowly faded away. As a result, the children hardly have the golden opportunity of learning moral values from the elders also. As a consequence, we have witnessed crimes by juvenile delinquents on the increase. Even the Government is forced to amend the Juvenile Justice (Care and Protection) Act to treat the Juveniles on par with adults in respect of certain heinous crimes. Feeling of togetherness has vanished. Love and respect for the elders have diminished. Some, among the younger generation, do also forget to maintain their parents. They are left in the lurch in the evening of their life. So, the Government had to think of converting the pious obligation to maintain the parents as a legal obligation. Thus, for the first time in the Code of Criminal Procedure, 1973, provision was made for payment of maintenance to the parents who are unable to maintain themselves. Though a claim for maintenance is in the nature of a civil claim, the said provision was inserted in the Criminal Procedure Code thereby giving jurisdiction to Judicial Magistrates hoping that it would be less expensive and speedy. But in course of time, the hope was belied. The aged parents continue to suffer. Many of them have to spend their life in old age homes.

Taking note of the above hard realities, in order to make the procedure easier, less expensive and to be on fast track, the Government has brought into force a completely new legislation viz., "The Maintenance and Welfare of Parents and Senior Citizens Act, 2007". With the above introduction as pointed by the Hon'ble Madurai Bench of the Madras High Court in *M.Venugopal Vs District Magistrate cum District Collector and Anr* [1], the authors are going to analyse the provisions of the above Act in the light of various provisions available under the various Acts at present.

Objective of the Research Paper
- To identify the benefits available under the Act, 2007
- To identify the liability of children
- To compare the provisions of the Act, 2007 along with the provisions of the other laws
- To identify the lacunas in the existing legislation
- To make suggestion for the effective implementation of the Act, 2007.

Object of the Act, 2007
The object of the Act is to provide for more effective provisions for the maintenance and welfare of the senior citizens guaranteed and recognised under the Constitution and for matters connected therewith or incidental thereto. The Constitution of India under Article 41 mandates "*the state to make effective provision for securing the old age".* Article 46 also states that "Promotion of educational and economic interests of ….other weaker sections: *The State shall promote with special care …. of the weaker sections of the people, and shall protect them from social injustice and all forms of exploitation".*

Maintenance under Personal Laws
Liability of Hindu Children to maintain their aged parents
The Hindu Adoption and Maintenance Act, 1956 under Section 20 deals with Maintenance of … aged parents. Sub section (1)

of Section 20 says *"Subject to the provisions of this section, a Hindu is bound, during his or her lifetime, to maintain his or her ….aged or infirm parents*. Further, sub section (3) says *"the obligation of a person to maintain his or her aged or infirm parent ….extends in so far as the parent* [2] *….is unable to maintain himself or herself out of his or her own earnings or other property*.

Liability of heirs of the deceased Hindu to maintain their aged parents

Section 21, while defining the term "dependants [3]" also speaks about the liability of the relatives under Section 22, to maintain the parents of the deceased son or daughter to the following extent:

"22. Maintenance of dependents:-

1) Subject to the provisions of sub-section (2), *the heirs of a deceased Hindu are bound to maintain the dependents of the deceased out of the estate inherited by them from the deceased*.
2) Where a dependent has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependent shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.
3) The liability of each of the persons who take the estate shall be in proportion to the value of the share or part of the estate taken by him or her.
4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependent shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part, the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.

As per the above provision, the heirs of a deceased Hindu are bound to maintain the dependents of the deceased out of the estate inherited by them from the deceased. So, if a Hindu son or daughter who is having the obligation to maintain their parents dies leaving his aged parents and his or her son or daughter who is not a minor, the son or daughter as the case may be, having the obligation to maintain their grandfather or grandmother to the extent they are inheriting the property from their deceased parents. On the other hand, if the son or daughter of the deceased has not obtained any share in the estate of a Hindu dying after the commencement of this Act, the aged parents as a dependant, shall be entitled to maintenance from those who take the estate and not from the son or daughter of the deceased son or daughter as the case may be.

The liability of relatives to maintain their aged relatives shall be in proportion to the value of the share or part of the estate taken by them. Suppose, if the son or daughter or heirs or relative are themselves is a dependant, then the above obligation shall not apply.

Under section 23 certain criteria has been mentioned subject to which the Courts are having discretionary power to grant maintenance. The above legal provisions deal with the rights of the parents alone and not about the senior citizens as mentioned in the Act, 2007.

Further, the things to be noted here is *the above provisions are applicable to Hindus only and not to other religious sector* [4].

Liability of Muslim to maintain their aged parents and relatives

The term "maintenance" under the Muslim Law, is called as '*nafaqa'* which means "what a person spends over his family".

Hedaya defines 'maintenance' as all those things which are necessary to the support of life such as, food, clothes and lodging.

There are three causes for which it is incumbent on one person to maintain other: – (i) *marriage, (ii) relationship and (iii) property.* The highest obligation arises on marriage; The second class of obligation arises when certain person has 'means' and another is 'indigent'. It is true that the obligation to maintain one's children is a personal obligation. The *obligation to maintain one's aged and infirm parents arises only if one is in easy circumstances and the parents are destitute*. The *obligation to maintain other relations arises only if one is in easy circumstances and the relations are poor,* and *it extends to only those relations who are within the degree of prohibited relationship and then too, only in proportion to the share one would inherit from them on their death.*

Quantum of maintenance

In fixing the maintenance, the judge in exercising his discretion should consider the rank and circumstances of both parties. According to Hedaya, the quantum of maintenance should be determined on the basis of rank and financial position of both the parties. Imam Shafii was also of the view that the financial position of both the parties should be taken into consideration.

Maintenance of parents

As the parents are under an obligation to maintain their children as stated above, so are the children are liable to maintain their parents. Every child whether male or female, adult or minor, who has sufficient property, is responsible to provide maintenance to their parents.

Maintenance of grandparents

A person is bound to maintain his paternal and maternal grandfathers and grandmothers, if they are poor and *not otherwise to the same extent* as he is bound to maintain his poor father.

Maintenance of other relations

Persons who are not themselves poor are bound to maintain their poor relations within the prohibited degrees *in a proportion to the share which they would inherit from them on their death.*

Liability of Christian and Parsi to maintain their aged parents and relatives

There are no personal laws for Christian and Parsis for providing maintenance to the parents. The parents who wish to claim maintenance form their children have to approach the Court of law under Section 125 of Code of Criminal Procedure, 1973.

Analysis of Maintenance and Welfare of Senior Citizens Act, 2007

Meaning of Maintenance

According to Section 2(b) of the Act 2007, *"Maintenance"* includes provision for food, clothing, residence and medical

attendance and treatment [5]. The term *"welfare"* has been defined under section 2 (k). According to which, "*welfare"* means provision for food, health care, recreation centres and other amenities necessary for the senior citizens. *"Parent"* means father or mother whether biological, adoptive or step father or step mother, as the case may be whether or not the father or the mother is a senior citizen [6]. *"Senior citizen"* means any person being a citizens of India, who has attained the age of sixty years or above [7]. As per Section 2 (g) of the Act, 2007, *"relative"* means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death.

Maintenance of parents and Senior citizens

Who can make an application?

Under section 4 of the Act, 2007,(i) the parents or senior citizens *who is unable to maintain themselves from their own earning or out of property* owned by them, shall be entitled to make an application against their one or more of his children who is not a minor or against, in case of senior citizens, his relative. (ii) In case, where senior citizens or parents are unable to file a case, they can authorize any other person or organization to file the case or (iii) the Tribunal is itself may take the case as *suo moto* [8]. *To make the application under this section, the applicant has to prove any one of the two essential conditions. i.e., (i) unable to maintain themselves from their own earning or (ii) unable to maintain themselves out of property* owned by them. *Whether the parents or senior citizens who is not earning or not having own property is eligible to claim maintenance under this Act?*

In *M.Venugopal Vs District Magistrate cum District Collector and Anr* [9], the Madurai Bench of the Madras High Court observed that "A senior citizen, including parents, will be entitled for maintenance only if he/she satisfies the requirements indicated in sub-section (1) of Section 4. The said provision states that a senior citizen, including parent, shall be entitled for maintenance, only if he is unable to maintain from his own earnings or out of the income from the property owned by him. These two are factual aspects which are to be proved before the Tribunal. Unless maintenance is asked for in the petition by stating either both or any one of these contingencies, it will not afford an opportunity to the respondent to either admit these facts or to deny the same and thereafter to prove his stand.

The application filed under this section shall be disposed of within a period of sixty days from the date of the service of notice of the application to such person. For the reasons to be recorded in writing, this sixty days period may be extended, by the Tribunal, upto one more period of thirty days in exceptional circumstances [10]. Where a maintenance order was made under this Act against more than one person, the death of one of them does not affect the liability of others to continue paying of maintenance [11]. The Tribunal is having the power to order for maintenance or the expenses for the proceeding from the date of the order or from the date of the application.

Failure to comply with the order

If any person against whom the order for maintenance or of expenses of the proceeding ordered, failed to comply with the order, without sufficient cause, for every breach of the order the Tribunal, issue a warrant for levying the amount ordered and may sentence the defaulter for the whole or any part of the each month's allowance for the maintenance or expenses of the proceedings, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extent to one month [12]. The things to be noted here is, to issue the warrant under this provision, application should be made, within a period of three months from the date on which the amount becomes due, to the Tribunal to levy the amount [13].

Ex parte order

Where any children or relative against whom the order for maintenance is proposed to be made, is willfully avoiding the service or willfully neglecting to attend the Tribunal, the Tribunal may proceed to hear and determine matter *ex parte, by taking evidence of the applicant and making such other enquiry as it deem fit* [14].

Whether this Act is applicable for the persons/relatives residing outside the territory of India?

Chapter – I of sub section (2) of Section 1declare that this Act is also applicable to Citizens of India outside India. Further, Section 6 (5) also deals with the procedure for the service of summons. It say "where the children or relative is residing outside India, summon should be served by the Tribunal through such authority as the Central Government specify in this behalf". The Central Government appointed Director, Social Defence Ageing in the Ministry of Social Justice and Empowerment, New Delhi to act as a nodal authority through whom summons shall be served by the Tribunal to the children or relative of the parents or senior citizens who are residing outside India [15].

Establishment of Tribunal

Under Section 7(2) of the Act, 2007, the Tribunal is presided over by an officer not below the rank of Sub Divisional Officer of a State. In the state of Tamilnadu, the Tribunal is presided over by Revenue Divisional Officer (R.D.O). The Tribunal may order for maintenance for an amount of not exceeding Rs.10,000/- per month [16]. Any senior citizens or a parent aggrieved by the order of a Tribunal may prefer an appeal to the Appellate authority, within a period of sixty days from the date of the order [17]. If sufficient cause is shown for not preferring the appeal within sixty days, the appellate Tribunal may entertain the appeal even after the expiry of the sixty days time limit [18]. The Appellate Tribunal shall be presided over by an officer not below the rank of District Magistrate [19] (District Collector). A close reading of section 16 shows that the right of appeal is not available to the children or relatives. In *M.Venugopal Vs District Magistrate cum District Collector and Anr* [20]*, it has been observed that "*right of appeal is a creature of statute and unless there is a specific provision made for appeal, such right of appeal cannot be readily inferred". Citing the case in *N. Kannadasan Vs. Ajoy Khose and others*, reported in 2009 (7) SCC 1, the Judge viewed that the missing of the words "aggrieved child or relative" in Section 16 of the Act is only an unconscious omission by the Parliament. By applying the principle of casus omissus, the Court held that such a right of appeal is available for the aggrieved son/daughter/relative as well. Further, the Judge observed as follows:

"I only hope that the law makers would take note of this anomaly and rectify the defect in the drafting of Section 16 of the Act". With respect to this provision the Panjab and Haryana

High in *Paramjit Kumar Saroya vs the union of India and another* [21] *r,* also gave the same opinion. The Court observed as follows:

"*It is a case of an accidental omission and not of conscious exclusion*" accordingly the Court held that Section 16(1) of the said Act is valid, but must be read to provide for the right of appeal to any of the affected parties.

Protection of Life and Property of Senior citizens

For the protection of life and property of senior citizens, the Act, 2007 under section 23 describe as follows:

Transfer of property to be void in certain circumstances:

1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, *subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor* and *such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence* and *shall* at the option of the transferor *be declared void by the Tribunal*.

   Under this section, if the senior citizens transfer his property by way of gift or otherwise with a condition that the person who receives the property, has to provide basic amenities and basic physical needs to the transferor and if the person who received the property fails to fulfill the condition as already stipulated, the transfer of the property shall be deemed to have been made by fraud or coercion or under undue influence and such transfer *shall be declared void by the Tribunal*, provided the transferor has to exercise this option to declare the transaction as void.

   In *M.Venugopal' s case (supra),* The Madurai Bench of Madras High Court held that the expression "otherwise" employed in sub Section 1 of Section 23 should be liberally interpreted to include even transfer of possession but, such transfer of possession should be on condition of providing basic amenities and physical needs. But, the High Court of Kerala in *Radhamani and Ors. Vs. State of Kerala and Ors* [22] held that "the condition referred in Section 23 has to be understood based on the conduct of the transferee and not with reference to the specific stipulation in the deed of transfer. Thus, it is not necessary that there should be a specific recital or stipulation as a condition in the transfer of deed itself. This condition mentioned in Section 23 is only referable as a conduct of the transferee, prior to and after execution of the deed of transfer. Thus, challenge based on the ground that there is no reference in the recital of deed that transferee will provide basic amenities and physical needs to the transferor is of no consequence". The Court further observed that the object of section is that transferee is bound to provide all provisions of welfare measures as understood as referable to the word "welfare" under Section 2(k) of Senior Citizens Act. The above view has been affirmed in *Shabeen Martin and ors Vs Muriel and Ors* [23].
2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.
3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.

Option regarding Maintenance in certain cases

Under Section 12 of the Act, 2007, an option has been given to the parents or senior citizen to claim maintenance even under Section 125 of Code of Criminal Procedure, 1973. But, not under both the Acts.

Comparison of Section 125 of Cr.P.C and Section 9 of the Act, 2007

Section 125 of Cr.P.C does not put any limit for the maintenance, whereas under the Act, 2007, the maximum limit of maintenance to be awarded is fixed as 10,000 [24]/-. Since there is specific bar in section 12, they cannot claim more than 10,000/- repress. If they want to get more amount of maintenance under the Code of Criminal Procedure, the more expeditious remedy available under the Act, 2007 will be precluded.

Suggestions and Conclusion

According to a report titled "Situation analysis of the Elderly in India – 2011" released by Central Statistics office Ministry of Statistic and Programme Implementation, In India, as a result of the change in the age composition of the population over time, there has been a progressive increase in both the number and proportion of aged people. The proportion of the population aged 60 years or more has been increasing consistently over the last century, particularly after 1951. In 1901 the proportion of the population aged 60 or over of India was about 5 percent, which marginally increased to 5.4 percent in 1951, and by 2001 this share was found to have risen to about 7.4 percent. About 75% of persons of age 60 and above reside in rural areas. The size of the elderly population has risen from 12.1 million in 1901 to approximately 77 million in Census 2001. According to official population projections, the number of elderly persons will rise to approximately 140 million by 2021. Therefore, to protect the welfare of the parents and senior citizens "*an unambiguous legislation is better than thousands of ambiguous legislation".*

Because, having more than one legislation would lead to absurdity rather than clarity.

Based on the above analysis, the authors would like to suggest the following:

i) The Tribunal or the Appellate Tribunal may be presided over by a legally trained person for the reasons mentioned in the *M.Venugopal's case (Supra).*
ii) A new clause to be added in Section 16 (1): Namely 16 (1) (i) "*any children or relative as the case may be, aggrieved by an order of a Tribunal, may within sixty days from the date of the order prefer the appeal, subject to the condition that they should pay the amount awarded by the Tribunal to their parents or senior citizens as the case may be, to the appellate authority*".
iii) The section 16 (6) may be subsisted as "*the Appellate Authority shall disposed of the appeal within one month of the receipt of the appeal*", instead of "*the Appellate Authority should make an endeavour to pronounce its order within one month of the receipt of the appeal". Because we have to give prime importance to the senior citizens including the parents.*

iv) With respect to section 17, there is similar provison in the Family court Act, 1984. in *Smt. Lata Pimple Vs The Union of India And Others* [25], the Bombay High Court by referring various judgments held that "Now it is well-settled that apart from the provisions of Art. 22(1) of the Constitution, no litigant has a fundamental right to be represented by a lawyer in any Court. The only fundamental right recognised by the Constitution is that under Art. 22(1) by which an accused who is arrested and detained in custody is entitled to consult and be defended by a legal practitioner of his choice. In all other matters, i.e. suits or other proceedings in which the accused is not arrested and detained on a criminal charge, the litigant has no fundamental right to be represented by a legal practitioner." It is open to the legislature to put restrictions on such representation by legal practitioner, having regard to the aims and object of the Act. On an identical issue the Supreme Court in *Lingappa Pochanna Appelwar and Ors. v. State of Maharashtra and Anr. Etc* [26], reiterated the same principle, the Court further observed. Hence section 17 does not require any re consideration.

v) With respect to Section 23, the author with due respect, accept the view given by the Hon'ble High Court of Kerala in Radhamani's case (*Supra*).

vi) To give effective implementation, awareness should be created among the ageis and Parents.

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4. See: Section 24 of the Hindu Adoption and Maintenance Act, 1956.
5. See also: Section 3(b) (i) of the Hindu Adoption and Maintenance Act, 1956.
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Observing international commutative contracts and the damage of postpone in rendering properties in the 1980 Convention and comparing it with Iran Civil law

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Abstract
Commutative contracts are one of the most common and important legal acts. Therefore, a main section of articles of various legal systems is about it. This diversity of systems resulted in various regulations which, in the lack of unified regulations, resulted in problems for contract parties in international commerce. In regard of this discussion about commutative contracts, the damage of postpone of rendering properties should be noted; this issue became more important in the years after the revolution in our country and various positions have been taken by jurisdiction about it. The problem which is paid attention to by commutative contracts parties from long ago is the responsibilities of property damage after making contracts and before rendering it to the costumer. The problem is that until when sellers have responsibilities regarding properties and in other words when liability is transferred to costumers. Answers to this issue in various legal systems are not the same. The present study observes the international commutative contracts comparing to Iran civil law and also damage of delay in rendering properties and consideration in the international commutative contracts convention (Vienn, 1980) and Iran law. Since Iran has not joined the aforementioned convention comparing them is necessary and useful.

Keywords: commutative contracts, damage, postpone in rendering, property, consideration

Introduction
Commutative contracts are one of the most common and important legal acts. Therefore, a main section of articles of various legal systems is about it. This diversity of systems resulted in various regulations which, in the lack of unified regulations, resulted in problems for contract parties in international commerce.
Since long ago, this kind of contract was considered one of the most significant commercial acts, so that it could be claimed that this kind of contract is the mother commutative contract and source of most commercial transactions like marine, territorial and aviatic transportations, insurance and etc. the frequency of commutative contracts comparing with other businesses resulted in legal systems establishing specific regulations about commutative contracts. Most of these legal systems do not consider huge differences between properties and consideration in commutative contracts and consider some rules equally obligatory as main conditions for both of them.
With the increase of grounds of economical activities in international and national domains, the necessity of achieving rules and principles resulting in stability, facility and expedition of commercial exchanges were sensed more than before and this view was accepted that legal terms are changeable, though founded on the stability principle, and can change based on time and place.
In addition to changes in the state rules of countries, in recent decades, cordial understanding was considered absolutely necessary in lives and seclusion and isolation have become unbearable. The ever increasing development of international commerce and the need of countries to novel conditions because of development of legal relations propelled the international society to codify integrated regulation s promising speed, facility and bolstering of international commercial relationships. In this regard, the Vienne international commutative contract of properties in 1980 can be pointed out which is the result of efforts of intellectuals and geniuses of the world in various legal, political, social, economical and religious for more than fifty years.
In this regard, the effort of the European commission about contract rights deserves praise. The European parliament ratified a resolution in 1989 in order to codify a principle or European code about private rights. The aforementioned commission codified the first section of European principles of contract rights in 1995 and eventually corrected and completed it in 1997, 1998 and 2000.

Statement of the problem
The main problem in this study is understanding and exploiting whether it is necessary that the rendered property accord with the one that is sold, or not? This research is based on Iran rules and the international commutative contracts of property convention in 1980s.
In Iran legal terms no single recommendation exists in this regard, but there is unity in regulations. Using the integrated recommendation of convention, perhaps we can also make a unity among the dispersed regulations on Iran civil laws.
The convention of UN in 1980 in Vienne about the international property commutative contracts resulted in development of international commerce by removing the legal impediments in trades and had taken a significant step in coming close to countries with different beliefs and customs.
The problem which is paid attention to by commutative contracts parties from long ago, is the responsibilities of property damage after making contracts and before rendering it to the costumer. The problem is that until when sellers have

responsibilities regarding properties and in other words when liability is transferred to costumers.

The answers to this issue in various legal systems are not the same. The present study observes the international commutative contracts comparing to Iran civil law and also damage of delay in rendering properties and consideration in the international commutative contracts convention (Vienn, 1980) [23] and Iran law. Since Iran has not joined the aforementioned convention comparing them is necessary and useful.

In fact, the difference between the state and international commutative contracts is not only that one of them has a foreign element and the other not. There are other differences distinguishing these two commercial activities from each other, whether technically, legally or regarding the economical policy of countries regarding these two kinds of contracts. In this study we observe the different aspects of this subject and also explain the loss of rendering about properties and prices (considerations) in the 1980 convention. Then we compare and contrast them with the articles in Iran civil law.

The concept of commutative contract and its difference with exchanges

Commutative contracts are one of the objective contracts that not only their conditions are their effects are separately determined in civil law, but also they have many common regulations of contracts with themselves. In other words, the traditional place of codifying the principles governs all contractive relationships.

On the other hand, commutative contracts obey the general conditions of other types of contracts; in this type of contract, both parties must have serious and legal will; a costumer and a seller must have the legal permission of ownership and use. The legality of contracts depends on existence of an objective subject and the rule considers collusion to reach an illegitimate goal ineffective. (Article 190 civil law onwards) (Katousian, vol. 1, 1387, No. 172 onwards) [24].

The article 338 of civil law defines commutative contracts as follows: (Commutative contract are rendering the possession of an object to a certain other party.) This large domain adds to the commutative contract are. Because, rendering the possession to any other party, whether money, property or service, is considered a commutative contract and it is not necessary that money is used in the trade. But there is a question: What is the difference between a commutative contract and an exchange and how can we understand whether a certain trade between two properties is a commutative contract or an exchange?

Distinguishing between a commutative contract and an exchange depends on the common intention of both parties. If they want to trade two properties with no privilege, this trade is considered an exchange and obeys its principles. Whenever they want that one of the properties is the object of sale and the other its price, the contract is a commutative contract. But there is still a problem T if it is not mentioned in the contract that it is a commutative contract or an exchange, how can we figure out the real intention of both parties? Does any evidence assist prosecutors in this analysis? In the rest of the study we observe this fact. (The same source)

The features of commutative contracts The article 338 of civil law defines commutative contracts as follows: (Commutative contract are rendering the possession of an object to a certain other party.) This definition which is derived of faqihs states that:

1) Commutative contracts are possessory contracts
2) Commutative contracts are of reciprocal contracts
3) The property should be objective

"Commutative contracts are possessory" means that the transfer of property to costumers and its price to sellers occur with offering and acceptance. When sellers and costumers agree on trading two properties and their conditions, properties and their prices trade with each other automatically and there is no need for commitment and execution.

That commutative contracts are possessory is accepted in Islamic rules and came as self-evident in the civil law. This issue is novel in European laws and some countries have not accepted it yet. (Katusian, Vol.1, 1387:15) [24].

The definition in article 338 of civil law clearly tells us that commutative contracts are reciprocal; It means that the property that is sold itself is traded with the other one (which nowadays is usually money).

This description distinguishes commutative contracts from other types. Because in these types of contracts, either some property is rendered to another one with nothing in exchange, or if the receptor has been given a commitment. Between that and the main subject, there will be no causal relationship. (Katusian, 1377:25-29) [25].

Another description that we observe is that the object of sale must be objective. Objectivity means a property having materialistic and palpable existence and that is independently traded not as a gradual fruit of another property. Usually when it is stated that the substance of some property was transferred, it means its substance and its interest. However sometimes it is possible that the financial interest is transferred to another by contracts. In that case the substance is called unprofitable.

Therefore, in spite of what some professors have written, not being sensible is not a situation that can distinguish substance from interests because not only sometimes interests are tangible, but also some of the types of substance cannot be found in outer world. Just like that a kharvar of wheat (generally) can only be imagined and based on it parties trade. (Katusian, 1377: 25-29) [25].

The differences between state and international commutative contract

In fact, the difference between the state and international commutative contracts is not only that one of them has a foreign element and the other not. There are other differences distinguishing these two commercial activities from each other, whether technically, legally or regarding the economical policy of countries regarding these two kinds of contracts. (Akhlaghi and Emami 1385) [26] (Stoufflet, 1957, 2) [26].

A: technical differences

Technically, the physical distance between seller and costumers is still the main problem, though communicative instruments have greatly advanced.

Most of the commercial trades are between countries that have large geographical distance between them. The reason is that the neighboring countries have considerably similar economical resources and that countries have to refer to far areas to get products that they do not have and cannot find in

their neighboring countries. This long distance has certain results.

If we ignore the distance between sellers and costumers, the international commutative contracts and state ones are different in another aspect. In the first type of commutative contracts it is almost obligatory to uses international or foreign currency (Dollar, Euro, Franc, etc.) as the trade price. In the state commutative contract there is no need to use any currency other than the one of the country of sellers and costumers.

B- Difference regarding legal and economical policies of countries

The most important difference between state commutative contracts and international ones must be sought in legal and economical considerations. In fact, almost in all ages, the international transactions were not in accordance with the governing of countries. Nevertheless, for centuries various governments, did not block the freedom of international transactions seriously and were just satisfied with the custom rules for transactions. Their goals were both getting some income for themselves and also support their citizens' activities.

Nowadays, regarding the epidemic economical crisis, most countries have to interfere more in the issues regarding the international transactions lest the liberty in transactions should cause severe imbalance in their payments to foreign countries or make their government lose the control of state market.

The result of this policy is establishing a control system of transaction which is somehow severe in most countries. This system both limits the transactions of goods and transferring capitals (Hamel, 1955, 115) [20].

This principles and regulations shaping the international transactional Jus commune either have supernational or state aspects, although they are about international transactions; the first group of these principles are observed under the title of supernational legal resources and the second group under the name of state resources of international commutative contracts.

The general principles of law

In some of the countries which produce oil, the only legal system is the Islamic one. The western countries argue that this legal system is limited to a certain Muslim area and are to solve the problems among Muslims. Also, they believe that in the oil rich Muslim countries, specific regulations are not anticipated to exploit and perform oil transaction between them and foreign countries.

As a result of this thought, in most oil contracts between oil rich countries and foreign companies, in addition to mentioning the rights of the oil rich countries, as governing law on contracts, the necessity of executing the general law principles are pointed out as complementary principles so that the oil rich country is satisfied that in the case of disagreement, its state law principles govern contracts, and also the foreign company is relieved that if some problem arise in its relationship with the other party, the recognized law principles in most legal systems of the world guarantee its rights. (Stern, 1980, 3) (Lalive, 1977, 319-369)

Observing the delay damage of rendering regarding the property and price in Iran law

In mere commutative contracts, rendering is the condition of validity of contracts. And also cause the nullification of lien and cancelling right of delay in payment. However the most important resulting effect on rendering is the interchangeable liability. In the following, the effect on rendering on the mere commutative contracts and afterwards its main effect which is interchangeable liability are observed:

A: The effect of rendering on nullification of lien the optional rendering of properties, results in nullifying the lien and its reason is the practical nullification of lien by sellers. The article 378 civil law, regarding this issue states that: (If sellers optionally render his property before getting the price, he cannot restitute it unless by cancelling rights.)

B: The effect of rendering on nullification of delay in price payment

According to the article 402 of civil law: (Whenever property substance is external or like that, and there is no determined deadline for paying the price or rendering properties between trade parties, if three days passes of the date of commutative contracts and neither the seller renders the property to the costumer nor the costumer does not pay the whole price to the seller, the seller can cancel the transaction.) So, whenever during three days since the commutative contracts date, a seller renders the whole property to costumers (or costumers pay the price to sellers), sellers do not have cancellation right anymore, even if by some methods property returns to the seller and payment is returned to costumers (Article 404 civil law). The rendering of property during three days after commutative contracts date by sellers means practical signing the commutative contracts and so the cancelling right is nullified, unless it could be proved, otherwise. (Sani the martyr 1410:336) [27].

Transferring the interchangeable liability, the most salient effect of rendering

By rendering, the liability is transferred from seller to costumers. Before observing this transfer, we must see what is meant by interchangeable liability.

The interchangeable liability means that each contract parties while signing the contract is obliged to give the counterpart of what they receive from the other party to the other party. Just like sellers who, when they receive payments, give properties to costumers and costumers pay the price of the property they receive. Now that we considered transfer of liability from the seller on the condition of rendering properties, we must state that there is another rule branched out from it which is that if a property is destroyed before rendering, a seller must guarantee its loss.

Although by commutative contracts per se, the ownership of property and payment are transferred (paragraph 1 article 364 civil law), whenever properties are destroyed by an external event, before rendering, the property of seller is destroyed and its price as mentioned before is the one transferring from sellers to costumers via rendering the interchangeable liability and before rendering it the contract is not complete. Its reason is that form analytic point of view commutative contracts is possession of counterparts and commitment to rendering them.

Therefore, until rendering does not occur, the contract is not complete (Paragraph 3, 4 of article 362 civil law).

The article 387 states about this issue that: (If a property is destroyed before rendering and the seller has no fault in it, the

commutative contract is cancelled and payment must be returned to the costumer.)
The important point here is that sometimes the interchangeable liability continues after rendering the property. That is when cancelling right is specified to the costumer or is shared between him and another foreign person. Ti means that if at the time of cancelling right specified to the costumer. The property is destroyed or damaged; the seller is responsible for it. That is what the article 453 state in this issue: (Regarding the cancelling rights of assembly, animals and conditions, if a property is damaged or destroyed after rendering or at the time of seller's cancelling right or the one of contract parties, costumers are responsible and if the cancelling right is specified to costumers, seller is responsible for destruction or damage) (Ibid, 336-340)

The recoverable damages of commutative contracts

A: the expenses of forming commutative contracts:
A costumer usually pays various expenses to buy their desired property which have no limitation and can occur in numerous cases. For example, these expenses could be pointed out: the expense of costumer's coming to meetings until the contract is made and property is transferred, the intermediary salary and expense of legal counseling to reassure costumers, the expenses of engrossing an official document. The expense of making the contract payment and keeping it, the expenses of evaluating properties.
Such damages and lodes must be compensated by seller and there is no ambiguity in it since sellers caused them for costumers.

B: Consideration of property interests

According to the article 261 of civil law (If an unauthorized property is given to costumers, whenever the costumer does not get permission from the owner, costumers are responsible for property substance and its interest during the time that it belonged to him, although they have not used its interests.)
According to the aforementioned principle, refusing the unauthorized transaction, the owner can take the interests of state accountants and non-state accountants from costumers and from this viewpoint, the costumer's liability, though ignorant to another person's merit, is the same as the one of the usurper. The reason is that in fiqh, the receptor of an illegal contract is considered a usurper.
Regarding this issue, faqihs do not agree on a verdict: After paying the counterpart of the mentioned interest to the owner of the property, can buyers refer to sellers and demand it back? Some of faqihs, e.g. the author of Meftah Al Kerameh, argue that costumers can refer to the unauthorized seller only for taking back the interests of non-state accountants and not in the case of state accountants. This is because in the second case, they have used the property before and cannot demand it back from the seller, too. (Allameh Helli, 1413:348) [28] But contrary to them many faqihs consider the returning of costumers to demand back the counterpart of state and non state accountants without problem and do not limit the costumer right to acquisition of the recent mentioned issue. (Najafi, 1367, vol 22:300) [29].

Demanding the loss of delay in payment

As it is mentioned in legal resources, the concept of loss of delay in payment is not like usury and compensation of decrease in money value. Supposing that the property belongs to another, the unauthorized seller had guarantee liability since the beginning of having the right to use the payments, because of the nullification of commutative contracts and they were obliged to return the payment to costumers. The willful rendering of payment by costumers to sellers does not mean satisfaction or consent since costumers imagined that the commutative contract was valid and the commutative contract being nullified, the consent is nullified too. So the unauthorized seller must pay for the losses suffered from delay in payment as an obligator.
In addition to it, if costumers demand the payment knowing that the property belongs to another, based on the article 522 of new code of civil procedure there is no doubt in costumers having the right to receive the loss payments of delay in payments since the date of demanding based on this article.
If the demandant, give the petition of restitution of payment and loss of delay in payment to a court because of the property belonging to another, can the court sentence the defendant to paying the price and loss of delay in payment based on the current price?
In cases which demandants demand the payment and loss of delay in payment because of the property belonging to another, the court must issue a sentence based on the article 522 of code of civil procedure interpreting the article 391 of civil law.
It was mentioned that the concept of loss of delay in payment is not like usury and compensation of decrease in money value. The unauthorized seller had guarantee liability since the beginning of having the right to use the payments and they were obliged to return the payment to costumers. The willful rendering of payment by costumers to sellers does not mean satisfaction or consent since costumers imagined that the commutative contract was valid and the commutative contract being nullified, the consent is nullified, too. So the unauthorized seller must pay for the losses suffered from delay in payment as an obligator.
Obviously, the loss of delay in payment, which has the nature of loss and is because of instigation and complacency, is more than the price that the unauthorized seller pays as refusing the payment itself as compensation of decrease in money value.

Observing the loss of delay in payment of property and price in 1980 convention

In the international convention of commutative contracts of goods there is no definition of loss. But the legislator used damage and loss in the article 74 of the convention and stated that the recoverable losses include material ones and loss of profit. He considered the anticipatablity the necessary condition for demanding losses.
The definition in the convention is generally stated and from this view it is congruous with the legal systems of countries and Iran. This article implied the principle of full compensation of losses. (Schlechtriem, 1998, 533) [22].
Based on this principle, obligees have the right to demand the full compensation of disadvantages because of cancelling contracts by committed people. Evaluating these losses are done based on comparing the situation of obligee when the contract is fully executed and when it is cancelled. This method provides the expectation interest of the obligee which is achieved by execution of the contract. The principle of complete compensation of includes both material losses or emergens Damnu and loss of profit or Lucrum Cessans. (Enderlain & Maskow, 1992, 22)

However there is an exception in the principle of complete compensation of losses in the convention which refers to article 5 of the convention. According to this article, convention does not include the responsibility of the seller regarding death or physical harms resulting from goods. Therefore, this kind of compensation also obeys the state regulations of countries of contract parties.

Therefore, summarily, it must be said that the article 74 of the convention expresses the principle of compensation for loss and its conditions. But the nature and types of commitments that are breached and their variety and numbers are counted and determined based on article 45 and 61 of the convention. So this article of convention must be interpreted in relation with articles 45 and 61 and also the principles 75 to 80. (Enderline, 1992, 1992, 297) (Delay in delivery)

Maintaining the possession in Iran law

In Iran law one of the effects of a legal commutative contract is transferring the possession. It means that when the commutative contract occurs, a costumer possesses the property and a seller possesses its price. (Paragraph 1 article 362 Civil law). of course this is the case in a commutative contract whose property is a determined object and if a commutative contract is aggregate or an aggregate in something specified, transferring the ownership is only possible after determining the property.

Contrary to most legal systems of the world, in Iran law transferring the liability does not accompany the one of ownership. The article 378 of Civil law states that: If a property is wasted before rendering and its seller is not blameful in it, the commutative contract is cancelled and the payment must be returned to the costumer). So, principally, transferring the liability occurs with rendering the goods. (The exception of article 453 of civil law must also be considered here).

In Iran law, the cancelling right weakened the effect of the condition of maintaining the possession. This is because even if such a condition does not exist, when costumers become insolvent and the counterpart of the property is with him. The seller can restitute it … (Article 380 civil law).

Therefore, the effect of mentioning the condition of keeping the possession in Iran will be like the extended condition of maintaining the possession in England and its effect board is even more than the one of England law, since demanding the profit of selling for costumers does not depend on proving the trust relationship between them.

The 1980 Vienne international commutative contract of goods is one of the obvious examples of this movement and it can be considered the product of theoretical and practical attempt of wise and intellectual men of various nations to reach the maximum agreement, unity and integrity in the international commercial right.

Conclusion

In a commutative contract a property is traded with another and each party tries to achieve a property which is worthies than the other. Therefore in it, the amount and features of both properties of trade must be clear. Also there are two possessions in it and the shared will of both parties connect them and create the concept of transaction.

The article 338 of the civil law defined the commutative contract as follows: (Commutative contract are rendering the possession of an object to a certain other party.) It is understood by this definition that a commutative contract is a possessory contract and one of the reciprocal types. Also, the property must be objective.

That commutative contracts are possessory, which is accepted in Islamic rules and came as self-evident in the civil law, is novel in European laws and some countries have not accepted it yet.

Some of jurists believe that there is not much difference between state and international commutative contracts. It seems that the only considerable difference between them is that the second type needs a supernational elements which is non-existent in the first type, and also this supernational element creates only one problem in the stage of dealing with problems and conflicts resulting from international commutative contracts. The judge, in order to solve the problem between sellers and costumers must refer to the system of conflict of rules Y But as soon as a national law governing in the contract is found, its regulations will be enough for solving the problems.

This viewpoint is clearly different with what actually exists. In fact, the difference between state and international commutative contracts is not only that one of them has a foreign element and the other not. There are other differences distinguishing these two commercial activities from each other, whether technically, legally or regarding the economical policy of countries.

Regarding sellers and liabilities, it must be added that in Iran law, the liability transferred only by rendering the good to the costumer and not to the person responsible for its transportation. The reason is that the seller's commitment is rendering the property to costumers.

In 1379, in Iran law, legislators of code of civil procedure of public and revolution courts made the demand of loss of delay generally possible on four conditions.

Faqihs generally considered the loss of delay in rendering the money usury and illegitimate in any case; But some of them, supposing the huge decrease of money value and guarantee of debtor in paying the debt on time, considered demanding the loss of delay in rendering acceptable.

At the end, I recommend that the article 522 of code of civil procedure of public and revolution courts in civil issues be eliminated from this law which is related to shape issues and be inserted in the civil law that is related to substantive regulations. Also the accepted solution recommended by the Guardian council be specified by legislators with stating that it is specified to its publication for non-bank and for companies and people.

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Concept of juvenility and juvenile justice

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Abstract
The concept of Juvenility which was based on the age of the child being below 16, was raised retrospectively to below 18 by the Amendment Act, 2006. This research paper covers the aim, objectives and benefits of the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 as amended by the Act of 2006 and discusses recent case of the Supreme Court in Abdul Razzaq Vs. State of UP.

Keywords: juvenility and juvenile justice, care and protection of children

Introduction

1. Juvenile Justice [1] relates to a child below 18 years being given the benefit of the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 as amended by the Act of 2006. The concept of Juvenility which was based on the age of the child being below 16, was raised retrospectively to below 18 by the Amendment Act, 2006. The scope of the benefit conferred under the Act of 2006 came up for a thorough discussion before the Supreme Court in a recent case [2] and the principle of law was laid down in very clear terms thus:-

"The benefit is available to a person undergoing sentence, if he was below 18 years on the date of occurrence. Such relief can be claimed even, if a matter has been finally decided" [3].

2. Considering the scope of 7A of JJ Act and Rule 12 of Juvenile Justice (Care and Protection of Child) Rules 2007, the Supreme Court in Hari Ram Vs. State of Rajasthan [4] observed 'that the claim of Juvenility may be raised before any court which shall be recognized at any stage, even after the final disposal of the case and such claim shall be determined in terms of provisions contained in the Act and the rules made thereunder, which includes the definition of the Juvenile in Sec 2(K) and 2(1) of the Act, even, if the Juvenile has ceased to be so on or before the commencement of the Juvenile Justice Act".

In other words, the crucial date for considering the Juvenility is the date on which the act was committed by the delinquent and not in any relation to any fact such as commencement of the Act, the date on which the charge-sheet has been filed or the date on which the final decision of the court has been rendered.

3. Sec 20 of the JJ Act extends the application of the Act to any pending case in any court, the determination of Juvenility of such a Juvenile in terms of Sec 2(1) of the Act, even if Juvenile ceases to be so, 'on or before the date of the commencement of the Act by specifically providing that the provisions of the Act would apply as if the said provisions had been in force for all purposes and at all material times, when the alleged offence was committed. In other words, if the person was below 18 years as on the date of the commission of the alleged act, the benefit conferred by JJ Act would be available.

4. Juvenile Justice (Care and Protection of Children) Rules 2007 makes it quite clear that in the case of the Juvenile in 'conflict with law', the State Government or Juvenile Board could either 'suo mottu' or an application made for the purpose, review the case of Juvenile, determine the Juvenility and pass appropriate order under Sec 64 of the Act for the immediate release of Juvenile, whose period of detention has exceeded the maximum period under Sec 15 of the Act i.e., 3 years. The scheme of JJ Act "is to give children, who have for some reason or the other gone astray, to realize their mistakes, rehabilitate themselves and rebuild their lives and become lawful citizens of society, instead of degenerating into hardened criminals [5]. The Supreme Court reiterated that 'Juvenility of a person in conflict with law has to be reckoned from the date of incident and not from the date on which cognizance was taken by the magistrate [6].

5. A claim of 'Juvenility' can be raised at any stage such as: [1].

i) Even after the final disposal of the case;
ii) It may be raised before the appellate court for the first time;
iii) Can be raised before the appellate court even though not raised at the stage of trial court; and
iv) Even after the conviction order has been given in the case.

The delay is raising the claim of Juvenility cannot be ground for rejection of the claim.

With regard to the claim of 'Juvenility' after conviction, the claimant must produce some material which may prima-facie satisfy the court that an inquiry into the claim is necessary. The initial burden has to be discharged by the person who claims the 'Juvenility' [8].

6. With regard to the material to be produced to satisfy the court on the claim of 'Juvenility', the Supreme Court observed thus [9].

i) With regard to the material to be produced, it cannot be catalogued;

ii) What weight should be given cannot be laid down but the documents may be sufficient to raise the presumption of 'Juvenility' and shall be sufficient for 'prima-facie' evidence to satisfy the court about the age of delinquent necessitating an enquiry;
iii) Statement recorded under Sec 313 of the Criminal Procedure Code is too tentative and by itself not sufficient to justify or reject the claim of 'Juvenility';
iv) The credibility or acceptability of the document like school leaving certificate or the voter's list obtained after conviction would depend on the facts and circumstance of the case and no hard and fast rule can be prescribed. However, the documents produced must be found prima-facie crediable; [1].
v) However, in Jitendra's case, [11] the school leaving certificate, marks sheet and medical report were treated as sufficient to direct an enquiry and for verification of the age. The court felt that the documents prima-facie inspire confidence of the court for directing an inquiry and for the determination of age; [12].
vi) An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of 'Juvenility' raised for the first time in appeal or revision or during the pendency of the matter or after disposal of the case shall not be sufficient for justifying an enquiry to determine the age of such person, unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an inquiry into the determination of the age of delinquent. The court, where the plea of 'Juvenility' is raised for the first time should always be guided by the objectives of JJ Act and be alive to the position that the beneficent and salutary provisions contained in JJ Act are not defeated by the hyper-technical approach and persons who are entitled to benefit get such benefits; [13].
vii) The court should not unnecessarily influenced by any general impression that in schools, the parents / guardians understate the age of their wards by one or two years for future benefit or that the age determination by the medical examination is not very precise. The matter should be considered prima-facie on the touchstone of preponderance of probability; [14].
viii) Claim of 'Juvenility' lacking in credibility or frivolous claim of 'Juvenility or patently absurd or inherently improbable claim of 'Juvenility' must be rejected by the court at the threshold whenever raised; [15].

7. The raising of the age of Juvenile to below 18 from below 16 applies retrospectively so as to give the benefit to Juveniles who are below 18 years at the time of the commission of the Act [16].

8. Where the plea of 'Juvenility' has not been raised at the initial stage of trial and has been taken only at the appellate stage, the Supreme Court has consistently maintained the conviction but has set aside the sentence [17].

9. The Supreme Court, [18] while dealing with cases of Juveniles, has laid down the following procedure:-
i) In all such cases, where the accused was above 16 but below 18 years of age, on the date of occurrence, the proceedings pending in the court concerned, will continue and be taken to their logical and except that the court upon finding the Juvenile guilty will not pass an order of sentence against him;
ii) Instead, he shall be referred to the JJ Board for appropriate orders under JJ Act;
iii) The trial court as well as the High Court are legally required to record a finding as to the guilt or otherwise of the delinquent; and
iv) All that the courts can do to record an order of conviction, cannot pass any sentence but refer the case to JJ Board.

10. Sec 7-A(2) prescribes the procedure to be followed under JJ Act [19]. However, there is no provision suggesting for the court before whom the claim of 'Juvenility is made, to set aside the conviction on the ground that on the date of commission of the offence, he was a Juvenile and hence not triable by an ordinary court of law. The court dealing with the case can only make a reference to JJ Board for appropriate orders, setting aside the sentence passed.

11. In conclusion, the following suggestions are made:-
i) The courts, while dealing with the case of Juvenile must have the necessary power not only to set-aside the sentence but also conviction order as well and leave the matter to JJ Board to deal with, in accordance with law;
ii) Detaining a person in jail pending the detention of the age of 'Juvenility' the courts must have the power to suspend the sentence. If it is found to be a case of 'Juvenile' all proceedings shall be quashed and direction given to JJ Board for appropriate order to deal with the case;
iii) The future of the Juvenile shall be protected from not keeping him in jail pending the determination of 'Juvenility' and
iv) A clear cut rule may be laid down exhaustively providing for the material to be produced for satisfying the court on the plea of 'Juvenility' so that the proceedings are expedited.
Witnesses may be produced, as a last resort to give evidence about the age or the exact date of birth like the prohit who attended the 10th day naming ceremony of the child or 1st Birthday which was attended by relatives and parties and so on.
The rule should provide sufficient guidelines for the determination of the age, so that a person entitled to JJ Act is not deprived of the benefit, just as a man who is not able to produce his BA Certificate being treated as an Inter qualified when he has actually passed BA examination and obtained the degree. Secondary evidence must be allowed to be produced, whenever necessary, in the interests of justice;
v) JJ Board must consist of experts in the area of child welfare and Juvenile delinquency and related aspects of child psychology to deal with the case of Juveniles.
It must be remembered that children are the future assets of the nation and the development of the nation lies in the future generation for its progress.

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Extent of judicial intervention in the arbitral regime: Contemporary scenario

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Abstract
This paper provides with a critical analysis of the 2015 amendments in the Arbitration and Conciliation Act, 1996 which aims at the segregation of the arbitral regime from the judicial intervention. The aim of these amendments was to preserve the sanctity of the arbitral regime as any aiding mechanism to relieve the overburdened Indian Judiciary. However, with the excessive judicial intervention in the arbitral proceedings, the purpose was getting dissolved. The issue before addressed herein is the extent to which these amendments have successfully managed to minimize the role of the judicial system and made arbitration an effective regime to deliver justice. Addressing this issue, certain irregularities in the intention of the legislature while making the amendments with respect to the spirit of the Arbitration Act have been highlighted.

Keywords: 2015 Amendments, *Competence Competence*, Judicial intervention in arbitration, appointment of arbitrators

1. Introduction
Prior to the 2015 amendments in the Arbitration and conciliation act 1996, India's journey in fastening the judicial pendency and disposal of cases has been extremely ineffective and subject to criticism. One of the major issues with the arbitration regime was the copious judicial intervention in the arbitration procedures that stood in contradiction to the whole aim behind setting up of this regime which was to unburdened the excessively burdened judicial system of India. This paradox and certain anomalies were recognized by the legislation that led to certain amendments in 2015 which led to a restriction on the active participation of the judiciary in the matters dealt by the arbitration. The Law Commision of India initiated the project to revolutionize the arbitration regime and amend the Act in 2010 [1]. The final report was submitted in 2014 and the Parliament and the President sanctioned the same in August 2015 [2].Post the 2015 amendment, the arbitration tribunal was given enhanced powers resulting from the reduced role of the judicial system in the purview of arbitration regime. However, how effective these amendments are in practicality is yet to be assessed.

1.1 Scope of this paper
This paper is a comparative analysis of the effect of the 2015 amendments on the extent of judicial intervention with respect to Arbitration and Conciliation Act (Part I of the Act). It analysis to what extent the amendments have been effective in liberating the arbitration tribunals from the restricting judicial regime [3]. The intention of the legislation to minimize the judicial influence in the arbitration regime is evident from the insertion of Section 5 that urges to reduce any sort of judicial intervention unless specified in the statutes itself and promote speedy disposal of the matters referred for arbitration. Section 5 of the Act has been derived from Article 5 of the Model Law [4] that provided with a limited view of the appropriateness of the Court's intervention in the arbitration matters. The idea behind the insertion of this section is not to blatantly negate all sorts of intervention by the judiciary, however, it is to restrict court intervention and to exclude all other remedies. This exclusions is neither restricted to certain defined stages of arbitration nor to the pendency of the proceeding solely. The excluded remedies involve the interim measures provided under Section 9, at the stage of reference to arbitration under Section 8 in pending actions or at the stage of appointment of arbitrators under Section 11. The amendments being further discussed are on the lines of Section 5 which aims to get rid of judicial intervention to a large extent to avoid any stalling of such matters.

1.2 Diminishing Judicial Intervention: Analysis of the 2015 Amendments
Prior to the amendment Section 8 provided the provision for the parties in dispute to refer the matter to the court irrespective of whether there was an existence of an arbitration agreement which is the prerequisite for seeking reference under Section 8 [5]. It laid a discretionary power on the courts to decide whether to refer the matter further to the arbitration tribunal if there is an arbitration agreement on the same subject matter as that of the dispute [6]. However, to curb these enhanced discretion in the hands of the courts, the 2015 amendment interchanged the word 'may' to 'shall'. This made the section preemptory imposing an obligation on the courts to refer the matter to the arbitration tribunal under an application made by a party to the arbitration agreement or any person claiming through or under him, not later than the date of submitting his first statement on the substance of the dispute, in case there is a prima facie existence of a valid agreement [7]. This in turn gives the arbitration tribunal to adjudge the validity of the arbitration agreement and check whether it has the competent jurisdiction to further adjudicate the matter under Section 16 of the Act. It throws light to the concept of *Competence Competence* envisaged under Section 16 of the act which empowers the arbitration tribunal to solely judge its own competence in a matter along with the validity of an arbitration agreement. The insertion of the term 'shall' in the first subsection of Section 8 makes it mandatory on the

courts to refer the parties to the tribunals in case the above mentioned conditions are fulfilled [8].

The second subsection, provides the party applying for reference to the tribunal to also file an application asking the court to call upon the other party to produce the original arbitration agreement in case they themselves fail to have the original or a duly certified copy. The effect of these amendments made under Section 8 led to significant changes in the functioning of the proceedings of the arbitration. Under first subsection, non-signatories to the agreement could also be referred to the arbitrational tribunal seated in India with the insertion of the term 'parties claiming through them' [9]. It became mandatory for the courts to refer the parties to the arbitration tribunal in case of a prima facie valid arbitration agreement that yet again condensed the discretionary power of the courts.

Furthermore, the purpose of diminishing the role of the judiciary is evident from the amendment of Section 11 of the Act. The amendment in Section 11 brought some insertions and structural changes to the section that drastically changed the procedure and nature of appointment of arbitrators. One of the main points of contention that arose under section 11 over the years is whether the function of the Chief Justice under the said section is an administrative function or a judicial function. In the case of *S.B.P & Co. vs. Patel Engineering Ltd*. [10], it was contended that since Section 11 vests the power of appointment of arbitrator on the CJI, and not the court, it is an administrative function which will lack any precedential value. However, the Court rejected this argument and ultimately held that it was a judicial function. Further, the recent case *of State of West Bengal vs. Associated Contractors* [11] recognized the issue of CJI not being the court per se and the requirement to replace CJI to the required competent courts i.e. High Court and Supreme Court. This, was taken up in the ordinance and in 2015, the word CJI was replaced to the either 'Supreme Court or High Court judges and was held to be an administrative function of appointment of arbitrators.

Further, there was insertion of two subsections namely 6A and 6B in Section 11 of the Act. Sub-section 6A stated that for the appointment of arbitrators the arbitration agreement of the dispute has to be examined. Also, this appointment of the arbitrator to adjudicate the disputes matter is in no form delegation of any judicial power. This amendment were made to undo the wide powers conferred in the hands of the CJI in the Patel Engineering decision. It recognized the Chief Justice of India's power to decide his competence and jurisdiction to adjudicate a dispute, the validity of the arbitration agreement and the existence of the condition for the exercise of the power and qualifications of the arbitrator or arbitrators. More so, it was held that the Chief Justice can delegate his power under section 11 only to another judge of that court [12]. However, this was revoked by the Ordinance that allowed the Supreme Court or High court to assign any other institution or competent person to make the appointment of arbitrator, which cannot be challenged on the grounds of delegation of judicial duties.

The newly amended subsection 7 states that the decisions made under subsections (4), (5) and (6) are non-appealable and final including no latent patent appeal to lie against it. Further, post amendment, under subsection 14, for the purpose of determination of the fee of arbitrators, there will be a cap on the fee that an arbitrator may charge in an ad-hoc domestic arbitration, which will be based on the dispute amount [13]. This amendment somewhere seeks to recognize the supremacy and finality of the judicial decisions which creates a sense of irregularity in the scheme of arbitration as envisaged under Section 5 of the Act.

Another recent amendment that recognized the independence of the arbitration tribunals was in the case of granting interim measures under Section 17. Prior to the 2015 amendment, any interim measures granted by the tribunal under Section 17 were not enforceable, which led to the parties seeking the same under Section 9 from the courts. This led to the dilution of the motive of unburdening of the judiciary as the Courts had to intercede to deal with applications of grant of interim measures which were enforceable under Section 9.

However, post the amendment, the role of the judiciary has been minimized due to several insertions in Section 9 which have to be read in light of Section 17 of the Act. Sub-section (2) has recently been inserted in Section 9 that gives the power to the court to grant interim measures only before the tribunal has been constituted for the matter and in case it does pass an order for interim measures, the arbitral proceedings shall be commenced within 90 days from the date of such order, or within such further time as the Court may determine. Moreover, subsection 3 was added that restricted the power of the court to not deal with any such application once the arbitral tribunal has been constituted and shall refer the same to the tribunal. It is then the discretion of the arbitration tribunal to grant interim measures under Section 17 of the Act. This remedy will only be entertained by the court in case the decision by the tribunal is challenged on the grounds of non-efficacy. Post amendment the interim measures granted by the tribunal are enforceable and the tribunals have the authority to make all types of orders for interim measures as the Court ever had. This amendment has recognized the supremacy of the tribunal and at the same time conferred with the intent of the legislation under Section 5 to minimize judicial interference for the effectiveness of arbitration as an alternate dispute resolution mechanism.

1.3 Blurring of the objective of the Ordinance: Insertion of 29 A

The insertion of this entirely new section was opposed by the Chairman of the Law commission of India, however it was inserted under the ordinance passed in 2015. This amendment raises certain question regarding its effectiveness to reduce judicial intervention.

This insertion imposes a time limit of twelve months on the arbitral proceeding from the arbitral tribunal enters upon the reference. This time limit on the consent of the parties can be extended by 6 months. However if the award is not made within the time limit defined, the mandate of the arbitrator terminates unless the Court on the application of either parties deems fit to extend the time period. This gives the court enhanced discretion to adjudge whether the delay in making the award or proceedings were due to a sufficient cause or not. Excessive powers have been conferred on the Courts to reduce the fees of the arbitrator(s) not exceeding 5 per cent for each month of such delay. Moreover, the court can command substitution of one or all arbitrators while extending the period.

The scheme of the act to diminish active role of the judiciary as evinced by insertion of Section 5 seems to blur. Section 29 A foists court intervention on the parties who wish to seek a further time extension above 18 months of arbitral proceedings. It is a highly impractical time bar set by the legislature since maximum arbitrations in India take a minimum time of 2 years for deciding the award. This makes judicial intervention more likely and essential thus creating a dependency of the arbitral regime on the courts. Further, the insertions of the term 'may' and 'sufficient cause' in context of courts granting extensions, creates a wide scope of discretion and arbitrariness by the Courts.

Moreover, such judicial intervention will further adjournment of the arbitral proceedings due to the enormous amount of pending cases in their docket. The power conferred on the courts to impose a penalty on the arbitrators' fee would gravely affect the relationship between the courts and the arbitral tribunal. This would in turn effect the efficiency of the arbitral tribunals to provide aid to the burdened Indian judiciary.

2. Conclusion

2.1 Potential Applicability of the Amendments

Arbitration is a trending dispute resolution mechanism in India which has undergone sever amendment in its functioning and effectiveness. The potential applicability of the above mentioned amendments is still a contention that is being raised. However, there seems to be irregularity in the intention of the legislature while making such amendments with respect to the spirit of the Act. While on one hand, there have been amendments in Section 8, Section 9, Section 11 and Section 17 that reduce the scope of judicial intervention to a large extent and uphold the supremacy of the arbitration tribunals in the arbitration regime, but on the other, insertion of Section 29 A nullifies the effect of the same. The inclusion of arbitration in the justice system was with the intention to reduce the pendency of cases with the courts and enhance the disposal of cases outside courts. However, Section 29 A enforces overambitious time standards which are certainly impossible for the tribunals to adhere to. This to a certain extent retains judicial influence on the arbitration proceedings and a dependency of the tribunals on the courts to avoid any harsh repercussions of the delay with the Courts have the power to impose. Though these are academic criticisms, it is yet to be analyzed in its potential applicability in the arbitration regime.

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Criminal responsibility for the use of torture some of countries CIS

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Abstract
In this article comparative analyzed responsibility for the use of torture in national, foreign and international legal standards and given a proposal for the improve of the legal basis responsibility for the use of torture.

Keywords: use of torture, inhuman treatment, cruelty, degrading punishment

Introduction

Human rights - is the supreme value. Initially among the ideas about human rights any views on personal rights. Namely, such rights as the right to life, liberty and security of person, to protection against encroachments on honor and dignity. It should be noted that "the killing of a slave is not regarded as a crime in ancient Rome, for the servant, according to the ancient Roman laws was the thing, so the deprivation of his life was considered civil law tort" [1]. This, in turn, is a proof that at that time no idea of equality of individual rights. Development of ideas of human rights served as enshrined in international legal norms inviolability of individual rights and freedoms. In particular, the Universal Declaration of Human Rights Article 1 states that All human beings are born free and equal in dignity and rights, in Article 3 - Everyone has the right to life, liberty and security of person, Article 5 - No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Naturally, when it comes to human rights, the importance of acquiring the right to personal integrity and his defense. Namely, everyone has the right to protection from various attacks. One of the types of attacks on the personal integrity of torture are, by their very nature are a danger to society. That is why in the international legal standards, and national law torture is prohibited and recognized as crimes.

In particular, adopted in 1950 by the European Convention on Human Rights, 19 December 1966 International Covenant on Civil and Political Rights, in 1975, the Declaration for the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, May 26, 1995 CIS Convention on Human Rights and Fundamental Freedoms, 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also secured the torture ban. As a result of the development of ideas about human rights in international law are reflected in the national legislation of States.

It should be noted that the Constitution of the Republic of Uzbekistan, recognizing the priority of the universally recognized norms of international law, article 26 specifies that no one shall be subjected to torture, violence or other cruel or degrading treatment. In addition, Uzbekistan has ratified a number of international legal instruments relating to this area. In particular, to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also secured the torture ban, adopted on 10 December 1984, Uzbekistan joined Aug. 31, 1995. Article 1 of this Convention, torture defined as follows: "any act by which act by which severe pain or suffering, whether physical or mental, to obtain from him or a third person information or a confession, punishing him for an act he or a third person or the commission of which they are suspected, and or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by a public official or other person acting in an official capacity or at the instigation of or with the consent or acquiescence ".

Note that, on the basis of the social danger of torture in article 235 of the Criminal Code against torture and other cruel, inhuman or degrading treatment or punishment defined as a crime. According to the Art. 235 of the Criminal Code of the Republic of Uzbekistan, torture and other cruel, inhuman or degrading treatment or punishment is considered as a criminal offense. According to this article “torture and other cruel, inhuman or degrading treatment or punishment, that is illegal mental or physical pressure on a suspect, accused, witness, victim or other participant of the criminal process or convicted person and their close relatives by means of threats, blows, beatings, torturing, inflicting suffering or other unlawful acts committed by the inquirer, investigator, prosecutor or another officer of the law enforcement agency in order to get from them any information or confessions of a crime, their unwarranted punishment for committed crime, or compelling them to commit any action”. "In the case where the torture occurred with application of violence dangerous to life or health, or with threat of such violence; for any motive, based on ethnic, racial, religious or social discrimination; a group of persons; repeatedly; against a minor or a woman known by the perpetrator to be pregnant, which is aggravated liability arises under Part 2 of Article 235. However, if the perpetrator acts resulted in serious bodily harm or other grave consequences - by part 3 of article 235 of the Criminal Code of the Republic Uzbekistan. Whoever is guilty of an offense under Part 3 of Article 235 of the Criminal Code, the penalty of imprisonment from five to eight years with deprivation of certain rights?

It is necessary to note that in light of the reforms in the legal system of the country carried out a massive work on strengthening the rule of law and human rights. The great

attention is paid to the changes in legal thinking and legal culture of the members of law enforcement agencies, so that each of them respected the rule of law and human rights guaranteed by international law, the Constitution of our republic and national legislation1.

As a result of the reforms on the further improvement of legal mechanisms of ensuring human rights and freedom there have been made number changes and amendments to the various legislative acts. In particular, in connection with the adoption of the Law "On introducing changes and amendments to some legislative acts in connection with the improvement of institution of the Bar" from December 31, 2008 were made some changes and additions to the Criminal Code, Code of Criminal Procedure, Code of Administrative Responsibility and the Law "On Advocacy".

According to Art. 49 of the Code of Criminal Procedure of Uzbekistan "the defender is allowed to participate in any stage of criminal proceeding, and under the detention of a person – since the actual limitation of his freedom of movement".

Moreover, Art.18 of the Code of Criminal Execution of the Republic of Uzbekistan stipulates that when dealing with complaints, as well as checking on their own violations of human rights, freedoms and legal interests of citizens Commissioner of the Oliy Majlis for Human Rights (Ombudsman) has the right to visit institutions on the execution of punishments.

In accordance with Art. 40 Criminal Executive Code Republic of Uzbekistan, on the judgments can receive and send letters without limitation of their number. Correspondence of convicted persons shall be censored, with the exception of correspondence with the Commissioner of the Oliy Majlis for Human Rights (Ombudsman).

In accordance with Art. 8 Law of the Republic of Uzbekistan "On the internal affairs "employee of the internal affairs is forbidden to resort to torture, violence or other cruel or degrading treatment. Body Interior employee is obliged to stop the action, which the citizen is intentionally inflicted pain, whether physical or mental suffering.

In accordance with Art. 7 Law of the Republic of Uzbekistan "About operatively-search activity" no one shall be subjected to torture, violence or other cruel or humiliating or degrading treatment.

In the criminal law of foreign countries also reflected the norms regarding the responsibility for the use of torture.

In particular, in accordance with Part 1 of Article 394 of the Criminal Code of the Republic of Belarus to the coercion of a suspect, accused, victim or witness to testify or an expert to give a conclusion by means of threats, blackmail or commit other illegal acts the person conducting the inquiry, preliminary investigation or carrying out Justice applied a penalty of deprivation of the right to occupy certain positions or engage in certain activities, or restriction of freedom for up to three years, or imprisonment for the same period, with disqualification to hold certain positions or engage in certain activities or without deprivation. In accordance with Part 2 of the said article is forced to testify or imprisonment with violence or bullying shall be punished by imprisonment for a term of two to seven years with deprivation of the right to occupy certain positions or engage in certain activities or without deprivation. The same actions connected with the use of torture, based on Part 3 of Article 394 shall be punished by imprisonment for a term of three to ten years with deprivation of the right to occupy certain positions or engage in certain activities or without deprivation.

Article 146 of the Criminal Code of the Republic of Kazakhstan called "Torture". Intentional infliction of physical and (or) mental suffering, an investigator, a person conducting an investigation, or any other official or other person with their instigation or with their consent or acquiescence, in order to obtain from the tortured or another person information or a confession, or to punish him for an act he or a person or in the commission of which he is suspected, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, in accordance with part 1 of article 146 shall be punished by a fine not exceeding five thousand monthly calculation indices, or correctional labor for the same amount, or restriction of freedom for up to five years, or imprisonment for the same period, with disqualification to hold certain positions or engage in certain activities for up to three years. The same acts committed by a group of persons or group of persons by prior conspiracy; repeatedly; the infliction of moderate bodily harm; against a woman known by the perpetrator to be pregnant, or minor, in accordance with part 2 of the article shall be punished by imprisonment for a term of three to seven years with deprivation of the right to occupy certain positions or engage in certain activities for up to three years. The above acts, entailed the infliction of grievous bodily harm or negligence death of the victim, in accordance with part 3 of article 146 of the Criminal Code of the Republic of Kazakhstan shall be punished by imprisonment for a term of five to twelve years with the deprivation of the right to occupy certain positions or engage in certain activities for up to three years [1].

Article 166^1 of the Criminal Code of Moldova called torture, inhuman or degrading treatment. Intentional infliction of pain or physical or mental suffering amounting to inhuman or degrading treatment, public or a person who actually performs the functions of a public institution or any other person acting in an official capacity or with the consent or acquiescence of such persons, causing attraction responsible for part 1 of article 166^1 of the Criminal Code of Moldova, shall be punished with imprisonment from 2 to 6 years or a fine of 800 to 1000 conventional units with the deprivation in both cases the right to occupy certain positions or engage in certain activities for a period of 3 to 5 years. The same actions committed in the presence of aggravating circumstances, such as: in respect of a minor or a pregnant woman or with known or obvious helpless condition caused by advanced age, illness, physical or mental disabilities or any other kind of factors; against two or more persons; two or more persons; with the use of weapons, special weapons or other items, designed for the purpose; official or person of political appointees; caused by negligence the infliction of serious or moderate bodily injury or other serious or moderate bodily injury; on imprudence entailed death of a person or a suicide, be punished by imprisonment for the term from 3 to 8 years, or a fine of 800 to 1000 conventional units with the deprivation in both cases the right to occupy certain positions or engage in certain activities for a term of 5 to 10 years.

In Part 3 of Art. 166^1 the Criminal Code of Moldova is given the following definition of torture in line with that under torture means any intentional act of inflicting any person

severe pain or physical or mental suffering for the purpose of obtaining from him or a third person information or a confession, punishing him for an act, committed by him or a third person or the commission of which he is suspected, intimidating or coercing him or a third person, or for any other reason based on discrimination of any kind, when such pain or suffering is inflicted by a public official or a person who actually performs the functions of a public institution or any other person acting in an official capacity or with the consent or acquiescence of such persons, which is punishable by imprisonment for a term of 6 to 10 years, with disqualification to hold certain positions or to practice from 8 to 12 years in certain activities for a period of the same actions committed in the presence of aggravating circumstances, such as: in respect of a minor or a pregnant woman or with known or obvious helpless condition caused by advanced age, illness, physical or mental disabilities or any other kind of factors; against two or more persons; two or more persons; with the use of weapons, special weapons or other items, designed for the purpose; official or person of political appointees; caused by negligence the infliction of serious or moderate bodily injury or other serious or moderate bodily injury; on imprudence entailed death of a person or a suicide, be punished by imprisonment for a term of 8 to 15 years, with disqualification to hold certain positions or engage in certain activities for a period of 10 to 15 years.

According to article 293 of the Criminal Code, under the coercion of suspects, accused, victim or witness to give evidence during interrogation, as well as an expert to give a conclusion by means of threats, blackmail, humiliation or other unlawful acts on the part of the prosecutor, investigator or person conducting inquiry, or at the instigation of the penalty of imprisonment for up to three years. The same actions connected with the use of torture in accordance with Part 2 of Article 193 of the Criminal Code of the Azerbaijan Republic shall be punished by imprisonment for a term of five to ten years.

Article 127 of the Criminal Code of Ukraine is called "Torture". Torture, that is, intentional infliction of severe physical pain or physical or mental suffering by beatings, torture, or other acts of violence in order to force the victim or another person to commit acts that are contrary to their will, including obtaining from him or another person information or a confession or to punish him or any other person for acts committed by him or by a person or in the commission of which he or another person is suspected, as well as to intimidate or discriminate against him or other persons shall be punished by imprisonment for a term of two to five years.

The same actions committed repeatedly or on preliminary arrangement by group of persons, or on the grounds of racial, ethnic or religious intolerance, shall be punished by imprisonment for a term of five to ten years.

In accordance with Article 302 of the Criminal Code of the Russian Federation suspected abuse, accused, victim or witness to testify or an expert or specialist to give an opinion or testimony by use of threats, blackmail or other illegal actions on the part of the investigator or person conducting the inquiry, as well as other a person with the consent or acquiescence of the investigator or person conducting the inquiry, shall be punished by restriction of freedom for up to three years, or community service for up to three years, or imprisonment for the same term. The same act, coupled with violence, bullying or torture, shall be punished by imprisonment for a term of two to eight years.

Thus, we note that as a result of the analysis it was found that in all of these states are defined in torture as a criminal offense which carries a statutory responsibility.

In conclusion, it is necessary to stress that the norms and provision of current national legislation meet the universally accepted norms and standards of international law. And the improvement of national legislation against torture and other cruel, inhuman or degrading treatment or punishment is one of the main conditions of the protection of human rights and freedoms.

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Non special inquiry agencies (Using urgent investigative actions the legal basis for the inquiry activity and the improvement of their)

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Abstract
Manuscript show the ways of improvement, critical analysis of the inquiry and suggestions to improve the procedural position of the inquiry agencies and the institution of the inquiry.

Keywords: inquiry agencies, criminal procedure, criminal case, the inquiry, the investigator, the pre-trial stages

Introduction

The Universal Declaration of Human Rights adopted by the UN in 1948, is regarded by the international community as the system is developed and coordinated at the highest level and the rules of human coexistence guidelines, as a sort of code of a mutually acceptable, civilized behavior in different countries, nations, corporate entities and individuals. The universal significance of this document, in which the expressed will of the consolidated about 200 nations of the world, convincingly demonstrated by the practice of his actions.

The Universal Declaration of Human Rights is one of the first international treaties on human rights, which Uzbekistan ratified after independence and thereby subscribes contained therein generally accepted standards and norms of human rights. Today, these generally accepted standards and norms of human rights are reflected in the domestic legislation of Uzbekistan. In particular, "the provisions of the Universal Declaration of Human Rights are embodied in the norms of the Constitution, national laws to ensure the protection of political, economic, social and cultural rights and freedoms" [1].

Since independence, the formation of a democratic state of law in Uzbekistan, first of all, it was designed to protect individual liberty. After all, the rule of law, rule of law, separation of powers, mutual rights and obligations of the state and the individual - these and other signs of the state characterize it as a law and create a more effective conditions for the realization of individual freedom.

One area that was exposed to radical reform is the judicial system. The reason is that without a new, independent, democratic legal system is not possible and the full functioning of the social, economic and spiritual life of the country. Of particular importance this was to acquire in case of failure of command - administrative management and decision-making for truly democratic, legal state and civil society with developed market economy, where the rule of law, strengthening the protection of rights and interests of the individual, family, society and the state, raising the legal culture and consciousness of the population, education of law-abiding citizens are both ends and means, the most important condition for the creation of such a state. To achieve this, the judicial sphere required a deep understanding of, and fundamental reforms, reform that was undertaken.

Inmates are not a special investigating body of the Republic of the main subjects of the criminal proceedings, provided that:

1) military units, commanders of the main task of the chiefs of the military institutions and educational institutions, military institutions and educational institutions, students, soldiers and military control of the disciplinary procedure;
2) The Ministry of Internal Affairs of the Republic of Uzbekistan leaders of the governing bodies of the system of execution of penal institutions in the form of arrest, penal colonies, the colonies, the main task of the heads of detention centers and prisons, which are these institutions the provisions stipulated in the Criminal Procedural Code serving the speed control;
3) Called the state fire control agencies shows that the policy of the government to control the fire;
4) Captains of vessels that the ship's precise and accurate control of the supply of management guidance.

Border guard authorities not to dwell on the reason for this is that, as a result of the reforms of the last years of the Republic, the State Committee for the protection of the borders of an independent state body in December 2003, and lost its importance as part of the National Security Service.

"On introduction of amendments and additions to some legislative acts of the Republic of Uzbekistan" On April 30, 2004, the Republic of Uzbekistan No. 621 II state border protection functions of the committee of inquiry on amendments and supplements to the law. The amendments adopted in December 2003 on the basis of the presidential decree and this decree to protect the borders of the State committee for national security associated with the introduction of the system. Thus, on August 20, 1999, "the State border of the Republic of Uzbekistan" On December 15, 2000 and the law of the "fight against terrorism" On amendments and additions to the law, the fight against terrorism and the protection of the borders of the state investigation and rapid implementation competence to carry out activities gauges are now only carried out by the National security service.

Republic of Uzbekistan "On the state border" in accordance with Article 29 of the Law on the National Security Service, border protection and security intelligence, counterintelligence procedure and operational-search activities and the development of measures to combat smuggling. This change should be included in the amendments to Article 38 of the trial of the Republic of Uzbekistan, as well as Article 38 of the trial, "6) Border guard officials, violation of the state border;" content should be removed from paragraph 6 [2].

The results of the survey conducted in the above-mentioned inquiry showed that there is not a separate state. Not a special inquiry investigating government officials called the inquiry is not entirely correct. Because of the state administrative agencies are not always a crime. Investigation, and if the offense was committed. At other times, their main functions. In particular, in the case of the regional state fire control bodies, it is clear that during the years 2008-2014, only two criminal proceedings are fulfilled.

We believe that a special inquiry and urged the participants of the criminal proceedings is not simplified. Research has shown, military units, penal colonies, far away so many ships inquiry. For example, Navoiy Province No. 34051 military conducted the survey shows that the crime scene was found immediately, even before a criminal case not brought sent to the military prosecutor's office. Although the inquiry that a separate state, that it is the statutory and other legal documents, the practice is evident in the lack of interest of any of them. What is the impression that the inquiry about the essence of his work, or the organization of seminars. In this regard, the professor G. Abdumajidov the following ideas: the "project of Penal Procedure in the process of inquiry that they have sufficient knowledge of the legal framework, and that a full inquiry, the preliminary investigation as a form of status. As a result of the conversation made by the employees of the penitentiary system there is an inquiry, not just think about the result of operational search activities ".

In addition, only in the Surkhandarya region of Uzbekistan is not a small naval presence and there is also the Institute of the investigation were not identified.

Further investigation authority of the State fire control bodies. According to statistical data, the number of fires that occurred during 2006, including Turkey in 2005 increased by 1.8%, 18.3% the amount of damage caused by the fires, and the number of injured decreased by 0.6% [3].

This is a positive indicator, but a survey of state fire control bodies of inquiry, such as the above inquiry is not the most important. There is also determined if a crime is immediately transferred to the Prosecutor's Office and with information about how the investigation is being carried out.

Therefore, a special criminal investigation body considered necessary to change the legal status of the participants in the criminal proceedings. Therefore, an investigation by the authorities of the monthly report, fill in the blanks, and other similar recipe to prevent these bodies in accordance with the purpose of some of the actions of the criminal procedural amendments, and their bodies as a result of the above-mentioned criminal activities simplify.

We believe that all of them to carry out operational-search activities necessary to end the status of the inquiry body. Because these institutions need to institute an inquiry and, if required, is the crime after finding no urgent investigation is underway. These bodies in accordance with the relevant article of the Penal Procedure of the Republic of the penitentiary system is a complete and thorough work.

Inmates are subject of a new criminal procedure of the Republic of "officer" and the term of its rights and obligations, and today's requirements as well. Although, in practice, this name, criminal-procedural legislation, legal norms regulating relations. Appropriate, the opinion of Article 39 of the trial the following words are filled with purpose. "Listed in Article 38 shall have the right to see each inquiry agency operative officer. Criminal identified to conduct a preliminary investigation, the right to see the necessary operational search measures ".

Legislative investigation is not a criminal proceeding related criminal cases are clearly identified from the list of subjects because of these organs and the socially dangerous acts that take place in any round is very difficult to determine, at the same time to say in advance how the crime has been washed. For example, military units, penitentiary institutions, far away to sea-going vessels of any crime, regardless of the inquiry there are signs of a crime, in any case, the criminal case as well as the activities of this criminal case is completed by the investigator.

However, in practice, is not a special investigation on the activities of the criminal proceedings in order to prevent the origin of the various misunderstandings, the result of the analysis of the norms of the Criminal Code of the Republic of Uzbekistan on August 29, 2001, "the Republic of Uzbekistan in connection with the liberalization of criminal penalties, the Criminal Procedure Code and the Administrative Code amendments and supplements to the Law "On to change the criteria for classification of crimes stipulated by the Criminal Code because of the social danger of the law are among the crimes punishable by imprisonment lighter crimes, including the crime, punishable by up to three years' imprisonment for crimes. As a result, Criminal code social danger of crimes decreased from 18.7% to 42.8%, less serious crimes, 50.4 percent, 30.3 percent and violent crime by 17.6 percent to 15.1 percent, the most serious crimes is 13.3 % to 11.8%.

Provided by the State Criminal code 87 criminal cases and lightened the punishment, including 26 relevant articles of the criminal sentenced to imprisonment or removed [4].

The subjects of the investigation is not a criminal proceeding outlined a list of criminal activities. This, in turn Inmates are required to include the following new Article:

"The 339-1 criminal inquiry proceeding

1) Article 221, Article 222 of the Criminal Affairs, Ministry of Internal Affairs of the Republic of Uzbekistan as well as the leaders of the governing bodies of the system of execution of penal institutions in the form of arrest, penal colonies, colonies, detention centers and prisons boy;
2) Provided for in article 259 of the Criminal Code, the Criminal Code, as well as the state fire control bodies of investigation department of inquiry;
3) 279 of the Criminal Code. 1.2., And 280-m. 1-q., 282, and 283-m. 1-q. 284, 285 m., 1., 287-m. 1-3q., 288-m. 1., 290-m. 1., 291-m. 1-q., 292, and 293-m. 1-q., 295, and 296-m. 1-q., 297 m. 1., 298-m. 1., 301-m. 1. Article 302 of the Criminal Code, as well as military units, commanders, heads of military institutions and educational institutions;

4) The journey, the captain of the ship - on board the ship has the right to conduct any investigation of the criminal case."

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Do the emergency services have a duty of care towards individual members of the public? A critique under the English tort law

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Abstract
The duty of care refers to the circumstances and relationships which the law recognises as giving rise to a legal duty to take care. The emergency services exist to assist members of the public who are in serious and immediate danger but in certain circumstances, some of them also bear legal responsibility if they fail to fulfil their obligations. A failure to fulfil the obligations can result in the emergency services being liable to pay damages to a party who is injured or suffers loss as a result of their breach of the duty of care. In this article, we have reviewed the duty of care of the police, the fire brigade, the coastguard and the ambulance service towards individual members of the public as a part of emergency services in the light of English tort law. We have also discussed the extent of the duty of care of these emergency services and their legal responsibilities. In this article, doctrinal research method has been applied.

Keywords: ambulance service, coastguard, duty of care, emergency services, fire brigade, negligence, omissions, police

1. Introduction
According to the Oxford Law Dictionary 'duty of care' means *"the legal obligation to take reasonable care to avoid causing damage"*. [1] Therefore, the duty of care exists as a control device in order to determine who can bring an action for negligence and what circumstances, because it is accepted that negligence does not exist in a vacuum and that there is no all-embracing duty owed to the whole world in all circumstances. The purpose of the emergency services is to assist members of the public who are in peril but some also bear liability in certain circumstances for their omissions. The police, the fire brigade, the coastguard and the ambulance services are indispensable emergency services. Whether the emergency services have a duty of care towards individual members of the public, it depends on the nature, circumstances and the conduct of the emergency services. It is important to mention here that these emergency services are one of the public authorities. [2] So there is a chance that the Human Rights Act 1998 (HRA) will play a role in the action against the emergency services for the negligence. However, these emergency services have a blanket of immunity against an action in negligence on policy grounds.

2. The Concept and Application of Duty of Care
2.1 The test for determining the existence of duty of care
The doctrine of duty of care provides that a person will only be liable to another for negligence if he has a duty of care towards the other and he has breached that duty and caused damage to the other. The case of *Donoghue v Stevenson* [1932] AC 562, established a test for determining whether a duty of care existed in each specific case and whether negligence has actually occurred. In this case, Lord Atkins said: *"In English law there must be some general conception of relations giving rise to a duty of care. The liability for negligence ... is no doubt based upon a general public sentiment of moral wrong-doing for which the offender must pay. But acts or omissions which any moral code would censure cannot in a practical world be treated so as to give a right to every person injured by them to demand relief. In this way, rules of law arise which limit the range of complainants and the extent of their remedy. The rule that you are to love your neighbour becomes in law, you must not injure your neighbour ... You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who then, in law, is my neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts and omissions which are called in question". (Donoghue v Stevenson* [1932] AC 562 at 580)
In addition, the case of *Caparo Industries PLC v Dickman* [1990] 2 AC 605, introduced a three-stage test for imposing liability for duty of care in the context of negligence. These are first, 'was the damage reasonably foreseeable?' Secondly, "was there a relationship of proximity between defendant and claimant?' Finally, 'is it fair, just and reasonable in all circumstances to impose a duty of care?' This case is a key to establishing whether a duty of care exists. Beside this three-stage test, in *Murphy v Brentwood District Council* [1991] 1 AC 398, the court raised the policy grounds as a fourth-stage test. But the courts usually consider the policy matter with the third stage-test.

2.2 Reasonable foreseeability of harm
Foreseeability means that the defendant must have foreseen some damage to the claimant at the time of their alleged negligence. Therefore, a duty of care will only be imposed where a reasonable person in the position of the defendant would have realised that his carelessness may cause the claimant to suffer the type of harm that he has suffered. The

facts of the each case determine whether the requirement is satisfied. In *Bourhill v Young* [1943] AC 92 at 107-108 Lord Wright said*: "This general concept of reasonable foresight as the criterion of negligence or breach of duty... may be criticized as too vague, but negligence is a fluid principle, which has to be applied to the most diverse conditions and problems of human life. It is a concrete, not an abstract, idea. It has to be fitted to the facts of the particular case... It is also always relative to the individual affected. This raises a serious additional difficulty in the cases where it has to be determined, not merely whether the act itself is negligent against someone, but whether it is negligent vis-à-vis the plaintiff".*

2.3 Proximity

'Proximity' indicates the closeness of some sort between the parties at the time of the alleged negligence, but its precise meaning remains complex. What will constitute proximity will vary from case to case. In many negligence cases, the issue of proximity is really an issue of whether the defendant was the effective and legal cause of the claimant's damage. Therefore, proximity is clearly a complex idea and means different things in different types of case. It may be used in the sense of a prior relationship between the parties and whether that relationship is sufficient to found a legal relationship giving rise to a duty of care. So there must be a sufficient relationship of proximity between the parties for the duty to be imposed.

2.4 Just, fair and reasonable and policy

The condition just, fair and reasonable appears to add little to the requirement of proximity, especially because the policy is also considered under the proximity test. This condition seems to indicate that there must be a limit to liability and that no duty will be imposed unless it is just, fair and reasonable in all the circumstances. In *Caparo Industries PLC v Dickman* [1990] 2 AC 605 at 633 Lord Oliver said: *"...limits have been found by the requirement of what has been called a 'relationship of proximity' between plaintiff and defendant and by the imposition of a further requirement that the attachment of liability for harm which has occurred be 'just and reasonable.' But although the cases in which the courts have imposed or withheld liability are capable of an approximate categorisation, one looks in vain for some common denominator by which the existence of the essential relationship can be tested. Indeed it is difficult to resist a conclusion that what have been treated as three separate requirements are, at least in most cases, in fact merely facets of the same thing, for in some cases the degree of foreseeability is such that it is from that alone that the requisite proximity can be deduced, whilst in others the absence of that essential relationship can most rationally be attributed simply to the court's view that it would not be fair and reasonable to hold the defendant responsible. 'Proximity' is, no doubt, a convenient expression so long as it is realised that it is no more than a label which embraces not a definable concept but merely a description of circumstances from which, pragmatically, the courts conclude that a duty of care exists".*

The policy has always played a major role in determining liability for negligence. The expression 'policy' has been developed through the cases and what will constitute policy will vary from case to case. Under the *Anns v Merton London Borough Council* [1978] AC 728, the policy had a broad meaning which encompassed proximity, fair and reasonable and public policy in the narrow sense in which it is now used. The courts showed willingness to invoke public policy principles of immunity where the emergency services and local authority services were sued in negligence.

The word 'floodgates problem' was also used by the court to indicate the matter of public policy. The accepted definition of 'floodgates' was given by Cardozo CJ in the US case of *Ultramares Corp v Touche* (1931) 174 NE 441 at 444 as the undesirability of exposing defendants to a potential liability *"in an indeterminate amount for an indeterminate time to an indeterminate class"*. A case may still fail on policy grounds even though it has passed through the proximity barrier. In *Alcock v Chief Constable of South Yorkshire* [1992] 1 AC 310 at 410, Lord Oliver said: *"...no doubt 'policy', if that is the right word, or perhaps more properly, the impracticability or unreasonableness of entertaining claims to the ultimate limits of the consequences of human activity, necessarily plays a part in the court's perception of what is sufficiently proximate ... in the end, it has to be accepted that the concept of proximity is an artificial one which depends more upon the court's perception of what is the reasonable area for the imposition of liability than upon any logical process of analogical deduction".*

3. Duty of Care of the Emergency Services and its Extent

3.1 The police

The police are one of the most significant emergency services. The courts have delivered many legal opinions how far the police owe a duty of care to the individual members of the public. The first case in relation to the duty of care of the police was the case of *Hill v Chief Constable of West Yorkshire* [1988] 2 All ER 238, before the House of Lords (the Supreme Court of the United Kingdom). The facts of this case are well known. The claimant's daughter was attacked and murdered by Peter Sutcliffe. The claimant claimed damages for her daughter's estate on the basis that the police investigations into Sutcliffe's crimes had been incompetent and had failed to apprehend Sutcliffe before her daughter's murder. In response to the victim's mother claim against the police, the court held that there was no proximity between the police and the claimant's daughter. The police could be held liable if the police themselves negligently cause damage. [3] Lack of proximity restricts the liability of duty of care. [4] So, there is no liability in the absence of proximity. [5] However, in *Swinney v Chief Constable of Northumbria (NO 2)* [1997] QB 464, the court said Hill case did not apply to the crime fighting activities of police.

In *Alexandrou v Oxford* [1993] 4 All ER 328, Slade LJ said: *"...it is unthinkable that the police should be exposed to potential actions for negligence at the suit of every disappointed or dissatisfied maker of a 999 call. I can see no sufficient grounds for holding that the police owed a duty of care to this plaintiff on or after receipt of the 999 call ... if they would not have owed a duty of care to ordinary members of the public who made a similar call"*. Thus, the police are not liable due to failure in response to the emergency call. [6] However, the police have a duty of care when not to act in a manner which makes things worse when they arrived at the scene. In *Rigby v Chief Constable of Northamptonshire*

[1985] 1 WLR 1242, the claimant's gun shop was at risk from a madman. The police came to deal with the situation. They fired a canister of CS gas into the shop creating a high risk of fire without first ensuring that a fire engine was on hand. The shop and its contents were seriously damaged by fire and the claimant succeeded in his claim against the police. Similarly, in *Knightly v Johns* [1982] 1 WLR 349, in the course of traffic control following an accident in one of the tunnels in Birmingham city centre two police officers were instructed to take a course which involved them riding against the traffic flow around a blind bend. The claimant was injured in the ensuing collision and succeeded in his action for damages against the police.

In *Brooks v Metropolitan Police Commissioner* [2005] 2 All ER 489, the court held that the police generally owed no duty of care to the victims or witnesses in respect of their activities when investigating suspected crime due to public policy matter. In *Smith v Chief Constable of Sussex Police* [2008] UKHL 50, the court held as per core principle of public policy, the police owed no duty of care to protect individuals from harm caused by criminals in the absence of special circumstances. But the court said that there might have a remedy under the law of Human Rights. [7] In *Robinson v Chief Constable of West Yorkshire Police* [2014] EWCA Civ 15, the Court of Appeal considered the case of a woman knocked to the ground and injured during the arrest of an alleged drug-dealer. The Court of Appeal unanimously found that the police had not acted negligently. The court said that in order for a "duty of care" to arise three criteria had to be satisfied: a) foreseeability of damage; b) a relationship of proximity; and c) whether it is fair, just and reasonable to impose a duty. In *Michael and others v Chief Constable of South Wales Police and another* [2015] 2 WLR 343, the claimant, Joanna Michael, called 999 and told them that her ex-boyfriend was going to come home and had threatened to kill her. Police errors handling the call led to officers arriving after she had been stabbed to death. In this case, too, the court did not find against the police.

The well-established cases have made it clear that receipt of a 999 emergency call will not generally establish a relationship of sufficient proximity between the caller and the police to create a duty of care to respond or to respond competently. However, once the police have arrived at the scene they do have a duty of care not to act in a manner which makes things worse. In these cases, if they breach their duty of care and that causes injury or loss to the claimants, the claimant will be able to recover damages for injury or loss.

3.2 The fire brigade

The fire brigades are also one of the emergency services but with limited liability. In *Capital and Countries Plc v Hampshire County Council,* [8] the brigade arrived after the sprinklers had begun to operate. Before the brigade had identified the seat of the fire, or had effectively begun to fight the fire, they turned off the sprinklers throughout the building. This action caused the fire to spread out of control, and it destroyed the whole building. The owners' claim succeeded at trial. In *John Munroe (Acrylics) Ltd v London Fire and Civil Defence Authority*, [9] a special effects technician caused an explosion on wasteland which adjoined the claimant's land which contained Industrial premises. Burning debris from the explosion caused small fires to break out. The fire brigades were called and extinguished the fires on the wasteland but failed to check the claimant's premises. It was adjudged on a preliminary issue that there was no duty of care. In the *Church of Jesus Christ of Latter-Day Saints v West Yorkshire Fire and Civil Defence Authority*, The Times, May 9, 1996, a fire broke out during the night in a classroom attached to the plaintiff's chapel. The fire brigades were called and arrived promptly. However, the firemen were unable to fight the fire due to lack of water supply. Four of the hydrants surrounding the church were faulty and a further three were not located in time to fight the fire. Consequently, both the classroom and the chapel were destroyed. The claimant brought an action for breach of statutory duty based on the fire services failure to inspect the hydrants. The claim was struck out on the ground that the brigade owed no duty of care.

All of these cases went to the Court of Appeal through appeal application. The Court of Appeal dismissed the appeals in all three cases. [10] In the Hampshire case it was concluded that the brigade had made matters worse by turning off the automatic sprinkler system, and was, therefore, liable. They have immunity on the ground of proximity, not policy reason. [11] By contrast, in the London and West Yorkshire cases, the brigades did not cause any fresh danger or make the fires worse. Accordingly, the brigades were not liable.

Fire brigades operate pursuant to the Fire Services Act 1947, section 1 of which imposes a duty on every fire authority to make efficient provision for fire-fighting purposes. On its true construction, the requirement in s13 of the Fire Services Act 1947 that a fire brigade should take all reasonable measures to ensure the provision of an adequate supply of water available for use in case of fire was not intended to confer a right of private action on a member of the public. The s13 duty was more in the nature of a general administrative function of procurement placed on the fire authority in relation to the supply of water for fire-fighting generally. Accordingly, no action lay for breach of statutory duty under s13. [12] In *Alexandrou v Oxford* [1993] 4 All ER 328, Stuart-Smith L.J. said: *"In our judgment the fire brigade are not under a common law duty to answer the call for help and are not under a duty to take care to do so. If therefore they fail to turn up or fail to turn up in time because they have carelessly misunderstood the message, got lost on the way or run into a tree they are not liable".* (p.878)

In simple summary, the position of the fire brigades is that they do not owe a duty to individual members of the public and are not under any common law duty to answer a call for help. However, where the fire brigades actually have done something which created a danger then they have positive duty to take a reasonable step to deal with the danger.

3.3 The coastguard

The coastguards are also an important emergency service. The position of the coastguard who receives an emergency call appears to be indistinguishable from that of the fire service. In *OLL Limited v Secretary of State for Transport* [1997] 3 All E.R. 897, the organising centre who had settled the claims brought contribution proceedings against the Secretary of State for Transport as the person responsible for HM Coastguard. It was contended that the coastguard owed the canoeists a duty of care, but had conducted the search and rescue operation negligently. The principal allegations were that the search and rescue operation had been launched too

late, that a lifeboat had been misdirected to search inshore rather than offshore, and that a Royal Naval helicopter was diverted from an appropriate search to an inappropriate sweep up and down the coastline. The court held that there was no obvious distinction between the fire brigade responding to a fire where lives were at risk and the coastguard responding to an emergency at sea. On that basis, the coastguard had not been under any enforceable private law duty to respond to an emergency call. Therefore, the coastguard does not owe a duty of care to the people at sea except where the coastguard's behaviour actually causes harm. They should be liable if their conduct actually causes any damage. [13]

3.4 The ambulance service

The ambulance services are also one of the emergency services but have an exception than other emergency services in respect of liability. In *Kent v Griffiths* [2000] 2 WLR 1158, the claimant Mrs Tracey Kent was having an asthma attack. Her doctor attended her home and called for an ambulance at 16.25. The ambulance, which was only 6 miles away, did not arrive until 17.05. The claimant suffered respiratory arrest. Two phone calls had been made to enquire why the ambulance had not arrived and the operator confirmed that it was on its way. The doctor gave evidence that had she known of the delay she would have advised the claimant's husband to drive her to the hospital. The court held that although the ambulance services owed no duty of care to respond the call for help by a large number of people, however, once they receive the call from 999 for help then there was an obligation to provide the service for a named individual at a specified address. [14] In this case the Master of the Rolls Lord Woolf said: *"The fact that it was the person who foreseeably would suffer further injuries by a delay in providing an ambulance when there was no reason why it should not be provided is important in establishing the necessary proximity and thus duty of care in this case. In other words as there were no circumstances which made it unfair or unreasonable or unjust that liability should exist there is no reason why there should not be liability if the arrival of the ambulance was delayed for no good reason. The acceptance of the call in this case established the duty of care. On the findings of the Judge it was delay which caused the further injuries. If wrong information had not been given about the arrival of the ambulance other means of transport could have been used"*. (*Kent v Griffiths* [2000] 2 WLR 1158 at 1152)

Thus, it appears that generally, ambulance service does not owe a duty of care to respond the call for help by a large number of people likewise the police, the fire brigade and the coastguard. However, if the call is received for help then the ambulance service owes a duty of care to respond within a reasonable time because accepting of the call establishes proximity between the parties.

4. Impact of Human Rights

Besides the policy and the proximity reasons, the human rights issues play an important role on the duty of care of the emergency services. The human rights issues have been introduced to tort law by the passing of the Human Rights Act 1998 (HRA), which came into force in October 2000. The United Kingdom was an original signatory to the European Convention on Human Rights 1950 (ECHR), but until the Act the rights contained in the Convention did not form a part of national law. Under the HRA 1998, the ECHR applies either directly or indirectly. Most of the rights in the ECHR are now directly enforceable against public bodies in English law. A public authority is defined by s 6 (3) of the HRA 1998 as a court or tribunal or any person certain of whose functions are of a public nature. The emergency services are the public authority by virtue of s 6 (3) of the HRA 1998.

The decision of *Osman v United Kingdom* [1999] 1 FLR 193 (ECHR), caused great difficulties to the English judiciary. The European Court of Human Rights reviewed the Court of Appeal decision in *Osman*. In this case, the European Court of Human Rights (ECtHR) held that special immunity given to the police has breached the Article 6 of the ECHR. The ECtHR also held that the Court of Appeal had failed to demonstrate that it had properly considered the scope and application of such immunity to the facts of the case by balancing out any competing public interest arguments. This means that a victim of crime who has suffered personal injury can bring an action under the HRA 1998, by virtue of ss. 6 and 7, against the police for failure to prevent the crime. But in *Z v United Kingdom* [2001] 2 FLR 612, the ECtHR said that the *Osman* case was based on a misunderstanding of English tort law but they did not say that *Osman* case was, in fact, wrong. In *Van Colle v Chief Constable of Hertfordshire Police* [2008] UKHL 50, the court said with following the direction of Article 2 of ECHR and *Osman v United Kingdom* that, there was a positive obligation on the authority to take preventive measures to protect and individual whose life was at 'real or immediate risk' from the criminal act of another as the authority had known or should have known. [15] Therefore, it appears that it is impossible to ignore the effect that the Human Rights Act has had, and continues to have, on the fabric of substantive English tort law.

5. Conclusion

In the light of the above discussion, it is submitted that the negligence action involving emergency services are particularly complex as they are one of the public authorities. Therefore, the courts always look at the policy grounds to recognise a duty of care. In addition, the courts also apply the test whether it is just, fair and reasonable in all circumstances to impose liability for a duty of care. It has been established through a series of cases that generally, the police, the fire brigade and the coastguard do not have a duty of care towards individual members of the public except under special circumstances as discussed above. On the other hand, the ambulance service has duty of care towards individual members of the public if the help call is accepted from 999, which is different from other emergency services, because, it has been established through the cases that accepting of the help call from 999 establishes proximity between the ambulance service and the call maker. However, the impact of Human Rights Act 1998 (HRA) shows that the victims might have a chance to overcome on the claim against the immunity of the emergency services through using human rights litigation.

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Civil society organizations and its limitation

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Abstract
The legitimacy of Civil Society also rests with the people. While many non-governmental organisations can claim a claim a mandate to speak on global concerns and represent those interests unrepresented in the traditional political process, they are not accountable to direct democratic control. Although, these organisations are not democratically structured internally, however, they shall be accountable to the people in general.

Keywords: civil society organisation, transparency, ineffectiveness

Introduction

Concept of civil society is as old as the democracy and philosophy of popular participation. It could have form the clouds of French Revolution or many national movements in past, but the growth of international organizations and the search for panacea for good governance have transformed these socially viable entities to great extent.

The World Bank, on the basis of opinion of a number of leading research organizations has adopted a definition of civil society as "the wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their; members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil Society Organizations (CSOs), therefore, refer to a varieties of organizations: community groups, non-governmental organizations (NGOs), labour unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations".

When we compare with government, civil society means a realm of social life - market exchanges, charitable groups, clubs and voluntary, associations, independent churches and publishing houses - institutionally separated from territorial state institutions. This is the sense in which civil society is still understood today: a complex and dynamic ensemble of legally protected nongovernmental institutions that are nonviolent, self-organizing, self-reflexive within government control. In most regions of the world, the language of civil society has also been applied to such disparate political phenomena as the decline and restructuring of welfare states, the rise of "free market" economic strategies, and the growth of social movements.

International Strategy of Civil Society:

Civil Society is recognised by international organizations like UNO, World Bank and others. The Integrated Civil Society Organizations (ICSO) System is been developed by the Department of Economic and Social Affairs (DESA). Over 13,000 CSOs have established a relationship with the Department of Economic and Social Affairs (DESA). The vast majority of these CSOs are NGOs; there are also institutions, foundations, associations and almost 1,000 Indigenous Peoples Organizations (IPOs) listed as CSOs with DESA - which maintains a database of registered CSOs. Once registered with DESA, CSOs can also apply for consultative status with the Economic and Social Council (ECOSOC). If consultative status with ECOSOC is granted, the organization can participate in relevant international conferences convened by the United Nations and in meetings of the preparatory bodies of these conferences.

The United Nations is both a participant in and a witness to the growing global civil phenomenon. Non-governmental organizations (NGOs) and other civil society organizations (CSOs) are active partners of UN system and are valuable UN links to civil society. CSOs play a key role at major conferences of United Nations and have become indispensable partners for UN efforts at the national level. NGOs are consulted on UN policy and meetings and conferences for NGO representatives who are accredited to UN offices, programmes and agencies.

The World Bank first began to interact with civil society in the 1970 through dialogue with non-governmental organizations (NGOs) on environmental concerns. Today the World Bank consults and collaborates with thousands of members of Civil Society Organizations! (CSOs) throughout the world. The World Bank has learned through these three decades of interaction that the participation of CSOs in government development projects and programs can enhance their operational performance by contributing local knowledge, providing technical expertise, and leveraging social capital. Further, CSOs can bring innovative ideas and solutions, as well as participatory approaches to solve local problems.

Civil Society is the critic, and advocate of the unrepresented or the underrepresented before government. Often government fails due to its weak structure or policy and due to problems that may not be solved through planning from above, here comes the role of civil society. It creates awareness, interest and call for involvement. It has capability to mobilize the people and to penetrate the hearts and minds of the citizens who may find it hard to believe that their governments are making a genuine effort to tackle corruption. And, above all, it is essential to raise public awareness, to awaken society to the disastrous effects of corruption and to

get across 'the message that fighting it is possible.

The Growth of Civil Society

The present rumour is imminent demise of nation-stales, but they remain the predominant actors in the world political system, now challenged by global civil society. Global civil society is made up of nongovernmental organizations (NGOs), International Non-governmental Organizations (INGOs) and Transnational Networks (TNs). These non-state actors are individuals and groups with transnational interests and they frequently have counterparts in other countries than with their countrymen.

NGOs and INGOs are structured along traditional lines with headquarters, officers, membership fees, etc. Networks, however, have no person at the top and none at the centre. They are forms of organization characterized by voluntary, reciprocal and horizontal patterns of communication and exchange. Networks stress fluid and open relations among committed actors working in specialized issue areas.

They survive on finances donated. Donor concern with strengthening civil society in the South is a recent phenomenon. It appears to have emerged from the new policy agenda on good governance that was increasingly promoted by official donors during the 1980s and the early 1990s. As a result of this agenda, Northern donors began to explicitly promote political reform through development co-operation. Some donors advocate policies that limited state interference and reduced corruption in the public sector. There was a particular emphasis on aid recipient countries improving their records on democratic elections, human rights and the rule of law, to name some of the more common areas of reform.

The unresponsiveness of India's political parties and government has encouraged the Indian public to mobilize through nongovernmental organizations and social movements. The consequent development of India's civil society has made Indians less confident of the transformative power of the state and more confident of the power of the individual and local community.

Limitations of Civil Society

The civil society is not an integrated and territorial unit with constitutional mandate. It is more social than political, inherently more market oriented than social. The government has not made the clutches free. With the ideology the CSOs operate, there are still some lapses in everyone's mind. To least few of them:

1. Lack of Accountability and Transparency

Non-government organizations are organizations that are not controlled by government and are nonprofit making. The allegations against the CSOs / NGOs are that they are supposed to be effective on their objectives and also accountable to those they serve. However, the NGOs have increasingly failed by being unaccountable to those they are supposed to work for, they have continually been ineffective in their performance and they have adapted to elitist nature whereby they segregate themselves from others. They consider as independent government within a State and potentially have challenged the legal and financial status of their territory by their external links. The testimony of their activities is selfish in the way they work for a group that catches the attention of others. The ineffectiveness, the unaccountability and the elitist nature of NGOs is evident among much renowned organization and this can be seen to be true when one assesses their performance with regard to the current debate on good governance and civil society.

CSOs continue to face the complex issue of accountability; when CSOs rather than the state provide basic social services, such as health care, education and water supply to whom are they accountable? Some CSOs are membership organizations that seek to mutually benefit their members and are directly accountable to them. But the vast majority of social services delivered through CSOs are provided by professional development organizations with self-appointed boards (NGOs). Such boards rarely contain representatives of beneficiary communities but are normally made up of urban-based elites. Thus accountability downward to the beneficiaries of the services is generally weak in the CSO sector. In practice, the strongest form of accountability facing CSOs undertaking service delivery projects is to their international funders in industrialized countries.

The concept of accountability of an NGO is gaining worldwide acceptance. People often have their reservations against the projects in which the money that they are giving out will be spent by an NGO. The Governments of various countries are trying to formulate policies according to which every NGO must be listed and full report of the projects be made to the Accountability Committee.

One of the defining features of globalization has been profound proliferation of the NGOs and the increasing influence and reach of such actors at global stage. There has been sustained boom on international trade and investment activity, the not-for-profit activity also has grown with equal magnitude. But, like the purpose-built trade and investment agreements, the not-for-profit activities have been under looked by the architects of global governance, presently the international legal regime governing the not-for-profit organizations is far more skeletal than the for-profit activities.

2. Performance

There is the question of performance. Can the access, coverage, quality and efficiency of CSO service delivery be up to mark in quality and quantity?

3. Ineffectiveness

How can CSOs engage effectively with government at different levels? One of the major directions taken by public sector reforms in many developing countries is decentralization. This is an instance of ineffectiveness.

4. Inefficiency

UK's Overseas Development Institute (OD!) Zimbabwe, India and Bangladesh has reported that CSOs are successful in benefiting the poorest households or women, or ensuring self-sustainability of local CSOs.

5. Deficiency

Clearly CSOs, on their own, cannot overcome the wider factors disabling health service access and public sector service provision. Services of CSO cannot be seen as a substitute for the state. It is suspected that the CSOs may not handle epidemics ir a populous country like India.

6. Elite Capture

Evidences of Elite Capture have been found to be the central theme of management of CSOs. It is the broad base of functioning of CSOs and highlight on their prospects through elites? and media.

7. Away from Good Governance

The root of origin of CSOs is Good Governance, but the ideologies of Good Governance are on turmoil on the functioning of CSOs. The current debate on good governance and civil society emphasizes on peace building, democratization, quality leadership, responsibility and proper civil institutions. NGOs should assist in helping in peace building in countries in which they are situated, they should be involved in the resolving existing issues in the country for example by helping to find solutions to a countries conflicting issues when they arise, mediating disputing groups when there are ethnic tensions caused by political instability, coming up with measures that will reduce tribalism, nepotism and corruption, help in recovering to normal order.

8. Fragmenting the Government

It can be quoted as example: Many believe that strengthening civil society in Latin American countries will strengthen democracy. Others think that civil society associations weaken and fragment the political parties and government institutions on which democracy depends.

9. Destabilizing the State

The not-for-profit organizations often are blamed for arousing 'destabilizing a nation' by the wealth of foreign finance and on the pleas of human rights as evidenced from reports on Zimbabwe, Human Rights Watch.

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Constitutional and judicial perspectives on environment protection

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Abstract
Public Interest litigation has played a vital role for protecting and preserving environment. According to the court, life, health and ecology have greater importance to the people than the loss of revenue and employment. The conservation of forests and wildlife and reduction of pollution levels are vital components of such consideration of social justice.

Keywords: public interest litigation, environment protection, judicial activism

1. Introduction
Judicial activism may be taken to mean the movements of the judiciary to probe into the inner functioning of the other organs of the government i.e,. The Executive and the Legislature. It is the function of the Legislature to make law and of the Executive to implement the law but both the organs have failed to discharge their functions satisfactorily. In such circumstances, it is not the power rather duty of the judiciary to uphold the Constitution and compel other organs of the government to discharge their functions effectively. The Supreme Court, being the guardian of the Constitution, cannot remain mute spectator [1]. More to say, the concept of judicial activism is based upon rule of law, which is based upon the principles of freedom, equality, non-discrimination, fraternity, accountability and non-arbitrariness [2]. It has rightly been said that to safeguard the rule of law, on the foundation of which the super-structure of democratic edifice rests, judicial intervention becomes need of the hour. Development of the Public Interest litigation (PIL) has also provided significant assistance in making the judicial activism meaningful. The Strategy of PIL was devised for increasing citizen's participation in the judicial process for making access to the judicial delivery system to one, who could not otherwise reach court for various reasons. Thus, any member of the Public having sufficient interest can maintain an action for public injuiry [3].

2. Growth of public interest litigation
Since more than Four decade, Public Interest Litigation (PIL) has played a vital role by which belonging to all walks of life and especially the down-trodden are getting social justice from the Supreme Court as well as the High courts. Introducing the PIL concept in the case of *Ratlam Municipal Council* v. *Vardhichand* [4] case, Justice Krishna Iyer observed that social justice is due to the people and therefore the people must be able to trigger off the jurisdiction vested for their benefit to any functioning. He recognized Public Interest Litigation as a constitutional obligation of the Courts. In the case *S.P. Gupta* v. *Union of India* case [5], Justice P.N. Bhagwati says: procedure being merely a handmaiden of justice it should not stand in the way of access to justice to the weaker section of Indian humanity and therefore, where the poor and the disadvantaged are concerned this court will not insist on a regular writ petition and even a letter addressed by a public spirited individual or social action group acting pro bono public would suffice to invite the jurisdiction of this court. Thus, the courts through PIL, have recognized not only taxpayers' or consumers' standing economic or uneconomic interests but also standing in citizens' groups concerned with protection of natural environment, vehicular industrial pollution [6], negligence in management of solid waste, construction of large projects and increasing deforestation [7].

3. Environment protection under the constitution
From the *Vedas, Upanishads, Smrites* and other ancient literatures we find that man lived in complete harmony with nature. From the ancient scriptures of Hindu religion one learns that the people gave so much importance to trees, plants, wild lives and other things of the nature that they developed a long tradition of protecting and worshipping nature.
The earth has all along been considered as "Goddess Mother" in the ancient scriptures and revered for its immense potential of preserving, protecting sustaining all creatures including human being on it. It is a matter of great surprise that in spite of such a rich reverence shown to the earth and its environment, our constitution as enacted and adopted in 1949 hardly averred to natural environment.
Therefore, following the U.N. Conference on the Human Environment held at Stockholm, Sweden, in 1972, the Constitution of India was amended by the 42nd constitutional amendment and the subject of "ecology and environment" was incorporated for the first time through articles 48A and 51A(g). By incorporating article 48A in part IV of the Constitution, which contains the directive principles of state policy, the state has been given the constitutional mandate to protect and improve the environment and to safeguard the forest and wildlife of the country. Since the principles laid down in the part IV of the Constitution are fundamental in the governance of the country, therefore, it has been now the constitutional duty of the state to deal with the matters relating to environment, forest and wildlife of the country. The 42nd constitutional amendment did not confine the constitutional obligation to protect and improve environment only in the hands of the state but brought the obligation down to the level of the citizens also by incorporating article 51A

(g) in a newly introduced part, namely part IV-A of fundamental duties. This amendment is considered to be a revolution, as it was not only first of its kind in constitutional history expressing concern for environment and its protection, but it also accorded recognition to Buddhist and Gandhian environmental ethics, as article 51A(g) made it a fundamental duty for all the citizens of India not only to protect and improve the natural environment but also to have compassion for all living creatures. Another significant aspect of articles 48A and 51A (g) in spite of the non-enforceability in the court of law of the provisions of part IV of the Constitution, articles 48A and 51A (g) are being interpreted by the judiciary in such a way in the background of the public trust doctrine that the judiciary is striking down the governmental orders, decisions and legislations which are inconsistence with the provisions of these articles.

4. Right to environment and judicial action

Our Apex court after Maneka Gandhi [8] case, which deals with the human right relating to life and personal liberty, has given birth to new environmental jurisprudence through its judicial activism that right to life includes light to clean and healthy environment. The Supreme Court relying on the international concept of sustainable development i.e. inter-generational equity [9], which calls upon the state to bear solemn responsibility to conserve and use environment and natural resources for the benefit of the present and future generation.

Similarly, another principle that emanates from the concept of sustainable development is that economic and industrial developments must accommodate environmental protection. The Supreme Court relying on this principles ordered closure of certain mines that caused environmental damage in *Doon Valley* [10]. In *Ganga Pollution* [11] case also the apex court relying on the same principle ordered the closure of tanneries and held that though the leather industry brought much needed foreign exchange for the economic development of the country this should not be allowed at the cost of environment. According to the court the life, health and ecology have greater importance to the people than loss of revenue, employment etc.

The apex court has through judicial activism expanded the scope of article 32 and is utilizing it for fashioning new strategies for protection of environment. For example, the precautionary principle and polluter pays principle, which are offshoots of the concepts of sustainable developments, are being applied by the courts in the context of protection of environment by utilizing article 32 in appropriate proceedings.

Therefore, to prevent degradation effect on environment and ecology the court has applied the precautionary principle according to which the state and statutory authorities must foresee and prevent all the clauses of environmental degradation by taking appropriate measures. Further, according to this principle it is always the burden of the industrialist to show to the state authority that his industry will be environmentally safe and not harmful [12].

The polluter pays principle has already been utilized by the Supreme Court in several cases [13]. To do justice to both the environment and the victims of environmental pollution. According to this principle the remediation of the damaged environment is part of the process of sustainable development and as such the polluter is liable to bear the cost of reversing the damaged ecology as well as the cost of the sufferer. This philosophy of 'public trust' [14] finds place in our constitutional commitments and our judiciary is committed to upholding the same. This is precisely why judges are frequently called on to weigh individual interests on the scales of social justice. The conservation of forests and wildlife, as well as the reduction of pollution-levels are vital components of such considerations of social justice. It is on account of these considerations that the higher judiciary must continue to play a vigorous role in the domain of environmental protection.

Therefore, it will not be exaggeration of fact that the global movement on protection and improvement of environment has brought upon a profound effect on the constitution and the Judiciary in India. As we know that environmental degradation is not a national problem rather it is an international problem and environmental pollution is not confined to any territorial jurisdiction of a country rather it has trans-boundary effect causing environmental harm in other countries.

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