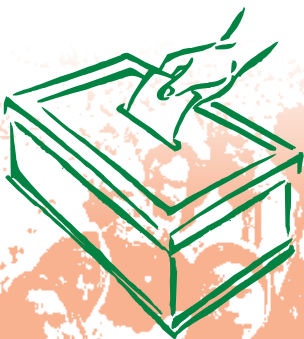




# JOURNAL OF **GOVERNANCE & PUBLIC POLICY**

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**INSTITUTE OF PUBLIC ENTERPRISE**

ICSSR (MHRD, GoI) Recognized Centre for Excellence

**Parliament and Foreign Policy Decision  
Making in India: Extent,  
Instruments and Impediments**

**Governance in Major Indian States:  
A Comparative Analysis of  
2004 and 2014**

**A Study on Growth of Capital Adequacy,  
Profitability and Liquidity Analysis of Indian  
Public and Private Sector Banks in the Post  
Financial Crises Period**

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**Exhaustion and Protection of IP Rights:  
Impact on Global Markets and Its Implication  
in Public Laws**

**Challenges of Water Provisioning in  
Hyderabad: Evidences from the Field**

**The Volatile Journey of India's Reservation  
Policy through Legal Amendments &  
Inconsistencies**

## Aims and Scope

**Journal of Governance & Public Policy** is a bi-annual refereed journal published by the Institute of Public Enterprise to provide a forum for discussion and exchange of ideas on Governance (local to global) and Public Policy (including foreign policy and international relations) by policy makers, practitioners and academicians.

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## From the Editors' Desk



Good governance has emerged as a vital force which brings about citizen-friendly, citizen-caring and responsive administration. In the absence of good governance, no development schemes can bring any improvement in the life-quality of the citizens. Therefore it is essential to strengthen the governance and it is also the precondition to improve the lives of the poor. The concept of good governance plays an important role in the modern governmental system.

The current issue of Journal of Governance and Public Policy presents research papers which have been developed around these highly relevant issues of governance and public policy in India. The papers are based on empirical research embedded with relevant theoretical foundations.

The opening paper critically evaluates the role of Indian Parliament and the foreign policy making process during these times when the world has become an increasingly borderless global village. A comparative analysis of governance in select Indian States is made in another paper that makes an attempt to construct a governance index based on fundamental principles of good governance.

A Study on Growth of Capital Adequacy, Profitability and Liquidity Analysis of Indian Public and Private Sector Banks in the Post Financial Crises Period looks at the growth of capital adequacy, profitability and liquidity analysis of Indian government owned and private owned banks during the post financial crises period (2008-2009 to 2017-2018).

Urban management issues have also been highlighted in this issue of the journal. In one of the papers, the author analyses the impact of basic urban services like water supply, sanitation, electricity, waste management and housing on human capital (education, health and economic) on human development. While the other paper focuses on the challenges of water provisioning and access to water for the residents of Hyderabad, the sixth largest metropolis in India in the context of rapid urbanisation in the city in the past few decades.

A paper on Exhaustion and Protection of Intellectual Property Rights and its impact on Global Markets discusses the need for further enforcement of intellectual property laws and the TRIPS involvement in minimizing the standards pertaining to 'Exhaustion Doctrine'.

A paper on reservation policy in India, an emotive issue, which has created turbulence in the Indian society also finds a place in the current issue of the journal. The most recent 103<sup>rd</sup> Amendment to the Indian Constitution proposes to extend reservation benefits to the economically weaker sections (EWS) of society.

**Dr Geeta Potaraju**  
**Dr A Sridhar Raj**

# Parliament and Foreign Policy Decision Making in India: Extent, Instruments and Impediments

**Sibaram Badatya\***

## **Abstract**

In the borderless global village, when the gap between internal and external affairs is gradually narrowing down, the matters of external relation no longer remain the exclusive business of foreign office and the role of other governmental agencies increases gradually. Among others, the parliament in a democratic country should play a greater role in India's foreign policy decision-making setup. Moreover, the increasing emphasis for the democratization of foreign policy decision-making, paved a larger role for the Indian parliament in external affairs leading to greater parliamentary involvement in contemporary international developments. However, the role and influence of the Indian parliament in foreign policy decision-making is apparently weak in comparison to other major democracies. In this regard, the present article is intended to analyse the role and influence and of Indian Parliament in foreign policy decision-making and the availability and utility of parliamentary instruments in the floor of the house in influencing Foreign Policy.

**Keywords:** Foreign Policy Decision-Making, International Treaties, Parliament, Parliamentary Committees

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## **Introduction**

With the rise of globalization and the expansion of state domain, the foreign policy decision-making in the modern world is deemed to be comprehensive and complicated. Additionally, the increasing interdependency of states and enlarging scope of foreign policy demand larger involvement of major organs of the government. Though, the Ministry of External Affairs is the pivotal player in managing India's external relations, other important agencies such as the Cabinet, Ministry of Defence, Ministry of Commerce and Industry, National Security Council, Prime Minister's Office and Parliament also are contributing significantly for the planning and formulation of India's Foreign Policy. Among others, the parliament in a democratic state deemed to play an important role in policy making. Moreover, the Indian constitution also gave unparalleled power

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to Parliament to legislate policies on items under the union list, including foreign affairs. Being the highest democratic institution of the country and the voice of the people, the parliament can also influence the course of foreign policy decision-making by using various constitutional provisions. Though, the process of policy making has been dominated by the bureaucratic agencies, the Parliament still plays a major role in shaping India's external relations.

## **Actors and Institutions of Foreign Policy Decision-Making in India**

Decision-making in foreign policy, is the most complex process, which needs multiple specialized agencies, individuals and institutions to deal with range of issues of different subjects. Though, the Ministry of External Affairs is primarily responsible to deal with the matters related to foreign affairs, agencies like, the Cabinet, the Prime Minister's Office, Ministry of Defence, the National Security Council, the Strategic Policy Group and the Parliament play an important role in the formulation of India's external policy. They analyse the foreign policy issues and take decisions to address these issues. In this regard, this section gives a comprehensive account on the structure, functions and the role of these agencies on India's foreign policy decision-making process.

### **Ministry of External Affairs**

Ministry of External Affairs (MEA) is the primary institution of foreign policy decision-making in India. It is one of the oldest and important departments of Government and primarily responsible to look after the matters related to the external affairs of the country. Since its formation, it has been successfully dealing with a spectrum of activities related to foreign affairs of India. Though a variety of agencies and actors have been involved in foreign policy decision-making process, it is the MEA which takes the final call on any of the issues and determine the course of foreign policy officially. Besides decision-making, the Ministry of External affairs also plays a significant role in information gathering, processing and analysing through its foreign missions for effective policy making. The ministry issues passports, gives consular services to Indian citizens visiting abroad and ensures their safety and security. It is also responsible for the issuance of visas to foreign tourists visiting India. Above all, the ministry plays a larger role in the planning and formulation of India's foreign policy. The ministry manages and coordinates the efforts of other stakeholders of foreign policy making and channelizes their efforts to materialise India's foreign policy objects. The Policy Planning and Research Division undertake research activities and is responsible for the planning and formulation of India's foreign and strategic policy. The division awards research projects to the academia and think-tanks and organise seminars and conferences on various issues of international affairs (Rajya Sabha Question No.2877, 2014, Dec. 18). The MEA prepares a monthly summary of important developments and global events for the Cabinet and senior officials of Government of India, on which the government prepares its futuristic policies (MEA Outcome Budget 2013-2014).

## **The Cabinet and Cabinet Committees**

In most of the Parliamentary systems of the governments like India, the important decisions on issues of national and international affairs are decided by the cabinet. Cabinet, being the top most decision-making body of the government, determines the course of external relations of the country by giving necessary directions. However due to the increasing burden of the central cabinet, it unable to pay special attention to the significance national politics and several specialized cabinet committees have been setup to assist the cabinet in policy formulations. The committees are responsible to resolve the intradepartmental conflict and ensure greater cooperation among the ministries and departments. Various specialized cabinet committees have been set up to deal with specific issues of their area of domain and pass its suggestions and recommendations to the cabinet for decision-making and it is up to the cabinet to incorporate or reject the suggestions. Though none of the cabinet committee deals with the subject of foreign affairs directly, it does not mean that foreign affairs remain out of its preview. Administrative Reform Commission used recommendation to setup a cabinet Committee of foreign affairs, which was eventually played down by the government (Maheshwari 1972: 509-10). Nevertheless, while formulating policies, most of the cabinet committees indirectly deal with the issues related to Foreign Policy and take important steps on the subject which affect India's external relations.

During the Chinese invention of 1962, an important committee namely, the 'Emergency Committee' was setup to deal with the matter on national emergency. Chaired by the Prime Minister himself, the committee acted like the 'inner cabinet' and performed remarkable tasks on national and external issues and was given high priority by the Nehru government. The committee was so active that the meeting of the cabinet was held almost every day and some times more than once in a day, hence "virtually replaced the cabinet as the supreme decision-making body in the Government of India" (Brecher 1966: 102) and the committee was playing the prominent role during the time of Rann of Katch dispute with Pakistan in 1965, but later lost its predominant position gradually. Similarly, the committee on World Trade Organisation Matters also works to resolve issues related to India's concerns at WTO. The committee constantly keeps eye on the recent development on the field of global trade and takes action accordingly to promote India's foreign trade. Cabinet Committee on Economic Affairs and committee on investment are responsible to improve India's economic conditions and to attract the foreign investment into the nation, hence indirectly related to the matter of foreign economic affairs.

## **The Prime Minister's Office**

The Prime Minister's Office is one of the most powerful institutions in Indian foreign policy decision-making mechanism. The PMO, in the Parliamentary system like India, is one of the most significant institutions of foreign policy decision-making. Though the management of the external affairs comes under the Ministry of External Affairs, the decision of the Prime Minister remains the deciding factor on any policy formulation. All important matters on foreign policy and national security need the Prime Minister's approval before implementation.



Since independence, the role of the MEA largely remain secondary to PMO as India never had an independent and charismatic Foreign Minister who was politically powerful enough to leave his personal imprints in foreign policy (Kapur 2013: 5). The Prime Minister in India often signs the international treaties and agreements with other nations and recommends the names of Indian Heads of Missions to the president. In this stage the PMO becomes the centre of the diplomatic relations.

After the formation of the National Security Council (NSC) and with the appointment of the National Security Advisor, who used to be the Principal Secretary to the Prime Minister, the role of the PMO has increased into many folds. However, the role of the PMO and the degree of his influence is very much contingent on his personality, leadership quality and the stability of his position within the political system. In foreign policy, the Prime Minister becomes the central figure when he shows personal interest in the international affairs and the decision-making constraint within the PMO.

During the time of Nehru, the Prime Minister's Secretariat (as PMO was called earlier) became the centre of foreign policy decision-making, as Nehru was handling both the MEA and PMO simultaneously. In addition, the leadership of Nehru was so influential, that the role of the cabinet was minimal and mostly accepted Nehru's views on administration (Bandyopadhaya: 2003: 135-36). Even, the PMO used to send orders directly to the executives, bypassing the cabinet and the cabinet committees. There is a belief that, Nehru had taken many decisions on Kashmir issue without consulting the cabinet, not even discussing with his deputy Sardar Patel (Bandyopadhaya: 2003: 84). Following the legacy, his successors equally enhanced the influence of the PMO in decision-making. Hence, by 1970s it became the "de facto coordinator and supra-ministry of the Indian government" (Sismanidis, 1995). Since then, the PMO has undergone several changes with the changes in the government. In spite of changes, it continues to remain the centre of governance and plays an important role in the planning and formulation of national policies of India.

## **The National Security Council (NSC)**

National Security Council (NSC) is the apex advisory body to the Government of India which gives advice to the Prime Minister and the government on the matters related to India's national security and Foreign affairs. All the three agencies of the National Security Council, Strategic Policy Group (SPG), National Security Advisory Board (NSAB) and the Joint Intelligence Committee (JIC) Although the Prime Minister and the cabinet take the final decision on any importance matter of foreign and defence policy, in recent years, the NSC has emerged as a major stake holder in the shaping of India's foreign and security policies. Headed by the National Security Advisor (NSA), the NSC also assists the government to formulate other significant policies that directly or indirectly affects India's national Interest, such as policies on economic and energy security. The NSA plays an important role in important policy making and its inputs are often followed by the government while making policies. Apart from the NSA, the council consists of eminent professionals and possesses immense potential to influence the national policy decisions.

## **Ministry of Defence**

Defending national territory and sovereignty is the main priority of the country's foreign policy. Hence, Ministry of Defence (MoD) has been one of the important stakeholders of the Indian's foreign policy decision-making machinery. It is a coordinating agency between the government and armed forces and gives additional strategic inputs to the government in external affairs. The Ministry actively participates in decision-making process and the government often seeks defence ministry's opinion while formulating policies on strategic affairs and national security. The Defence Minister is also an important member of the union cabinet and Cabinet Committee on Security as well as the integral part of the National Security Council, he possess enough clout in influencing India's foreign and security policies. Apart from the Defence Minister, the Defence Secretary, the three Chiefs of the Staff and Secretary of the Defence Production Division also participate in the decision-making process as the members of Strategic Policy Group. In case of any strategic or foreign policy crisis, the three servicing chiefs of the staff are asked to present their view on the issues that significantly impact the decision outcomes. With regard to issues of Chinese incursion for example, the army chiefs periodically briefs the cabinet committee about the issues and its possible reactions on which the government takes the policy decisions (The Hindu, May 1, 2013). The Defence ministry collects the intelligence data on the matters related to security and international strategic development through its intelligence agencies and shares its concerns with the government, which play significant role in shaping country's foreign policy.

Apart from the intelligence support, the defence ministry also engage in military diplomacy in extending India's defence cooperation with foreign countries. It periodically conducts, joint military training and exercises with friendly states and earns goodwill for the country. It also has a larger say in purchasing of foreign defence equipment and India's arms sale. Despite earning a lot of scope in decision-making, Ministry of Defence comparatively plays minimal role in India's foreign policy making. Its roles are limited in shaping the country's external relations compared to its counterparts of US, Russia, China and other advanced countries. Even Pakistan's defence ministry comparatively play greater role in foreign affairs than that of India.

## **Parliament and Foreign Policy Making in India**

Parliament plays a significant role in foreign policy making in India. In fact, parliament enjoys complete authority in making laws, for both domestic and foreign affairs, of this country. Thus, the part influences foreign policy activities in many ways. Though, some believe that the Parliament enjoys limited and minimal inputs in foreign affairs as compared to domestic affairs, it has been well established that domestic policies too can influence the foreign policies significantly. Article 246 of the Indian Constitution which distributes powers between the Union Government and the states authorize the Parliament to legislate on all aspects of external affairs of this country (Bakshi & Kashyap 2002: 101). Item 10 of the Union List under the Seventh Scheduled of the Constitution specifically empower the Parliament to formulate appropriate laws regarding foreign affairs (Constitution of India). In addition, items listed from serial number 9 to 21 of the union list include war

and peace, diplomacy, matters regarding UN, international treaties and agreements and under the supervision of the Parliament. Apart from the policy formulation, the Parliament is influencing the foreign policy decision in many ways using various tools. Using its budgetary control, it can slash down various allocations on military, defence, foreign aid and other such peripherals as well. Similarly by opening of new offices and branches and neutralizing the performance through resource control of such agencies that deal with the foreign policy activities, the Parliament can indirectly control the external policy of the country. Thus, one can agree that, the Parliament plays a vital role in foreign policy making in India and its role can be divided into four broad categories – legislative, advisory, influential and treaty ratification.

### **The Role of Parliament as a Legislative Body**

Parliament in India being the super most legislative body is empowered to enact laws for the items prescribed under the union list. It introduces, discusses and passes legislations for both domestic and international affairs. Article 246 of the Indian Constitution authorizes the Parliament to make laws for the nation. Clause one of the article says, "... Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List")" (Bakshi & Kashyap, 2002: 101) Out of the allotted 97 items of the Union List, items 1 to 21 are directly or indirectly related to the foreign affairs on which the parliament can make laws. Items under these sections deal with Military forces and management (items 1 to 4), diplomacy (item 11), UN (items 12), international treaties and agreements (items 14) war and peace (items 15), foreign jurisdiction (16) citizenship and alliances (items 17) and more particularly items 10 of the list grants exclusive power to the Parliament to legislate any matter related to the foreign affairs (Constitution of India). Similarly under Article 253, the parliament also possesses exclusive power to legislate or amend laws for the successful implementation of the international treaties, agreements and conventions. The Article reads "Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, associated or other body." (National Commission to Review the Working of the Constitution 2001) In addition, the Parliament also makes laws for other non-foreign policy subjects and can control each and every step of administration including the mighty executives that practically controls external policy. Hence, law making power have ultimately empowered parliament to have control over the foreign affair decision-making. Given below is a brief account of law making procedure of Indian Parliament.

### **Role of Parliamentary Committees as an Advisory Body**

As the Parliament has been over loaded with legislative and administrative tasks, it can hardly spare time to debate and discuss the matters of national importance in length and berth. Additionally, concession among in the Parliament is also equally difficult, leaving the issue hanging or below optimal. Hence, the role of a specialised body such as the Parliamentary Committee is highly essential, that

carefully scrutinizes the matter and gives its expertise inputs for a better foreign policy of the country. While playing the mediatory role between the executives and legislators, the Parliamentary Committees are taking suggestions from civil societies, interest groups and other stake holders for an affective policy.

All the parliamentary committees can be broadly classify into two categories, the Ad Hoc Committees and the standing committees, of which, departmental related standing committees play significant role in public policy formulation. Almost all the important ministries have their own DRSC and the ministry of external affairs have the Standing Committee on External Affairs (SCEA) in responsible in fine-tuning legislations that effects India's external relations. Set up in the year 1993, the prime objective of the committee is to assist the policy maker in the management of foreign policy. It analyses the referred proposals and submit its report after thorough research. Being a joint committee, it consists of the members from both the houses. The overall membership of the committee has been fixed to 31. While the Speaker of Lok Sabha selects 21 members, the remaining 10 members are nominated by the Chairman of Rajya Sabha. However, a minister is not eligible to become the member of the committee. The Speaker nominates the chairman of the standing committee. Considering its multidimensional tasks, several sub-committees or Study Groups have been created within the committee to deal with different specialized tasks. The standing committee also consults with various subject experts at the time of need (Standing Committee on External Affairs).

Withstanding its core objective to prepare a robust external policy for India, the Standing Committee on External Affairs carryout multiple functions on the divergent issues of foreign affairs. It examines the cases referred to it and gives its inputs regarding the proposal. It has some sub-committees and study groups to focus on different jobs of their area of specialization. Broadly, the Standing Committee on External Affairs matters related to restructuring of Indian Foreign Service and functioning of Indian Missions and Posts abroad, issuance of Passport and related matters, nourishing India's economic and energy diplomacy, Management of governmental scholarships to foreign nationals, Problems related to Indian Students and workers abroad and the reformation of India's the emigration system (Bulletin of the Lok Sabha, 2012). Furthermore, the committee examines the budgetary demands of MEA, study its functions and prepare its long term plan for the better management of India's external affairs. After the thorough scrutiny, the committee presents its report to the house for consideration. Based on the reports of the committee, the house takes the decision in the important issues of India's foreign affairs (Standing Committee on External Affairs) Besides scrutiny and reporting, the committee also regularly seeks briefings on the important international development from MEA officials and the officers are duty bound to appear before the committee and inform the committee, hence enforcing parliamentary controls on bureaucratization of foreign policy. The committee members also directly meet the visiting foreign delegations to facilitate meaningful interaction and understanding on global and bilateral issues. This meeting also helps the committee members to gain practical knowledge on the working procedure of other vibrant standing committees of foreign countries. Even, with the prior permission of the Speaker, it also undertakes study trip to foreign legislatives and foreign missions to learn and understand the complex

issues of global affairs. Apart from these works it also helps the ministries in several other ways including giving consultation to the parliament regarding the matters of external relations (Standing Committee on External Affairs).

### **Role of the Parliament as an Agency of Influence**

Influence refers to the capability to modify or change some one's behaviour in the desired way. Marriam-Webster Dictionary defines it as "the power or capacity of causing an effect in indirect or intangible ways" (Marriam-Webster online Dictionary). To be particular it refers to "the power to shape policy....." (Oxford Online Dictionary). In politics influence plays a major role in deciding policy options, be it the influence of vote, media or parliament. It occurs when such actors communicate with other actors or agencies to alter their policy behaviour (Betsill & Corell, 2008: 24). Parliament being the highest agency of governance in India also plays crucial role in influencing policy behaviour of the country.

Apart from the legislative powers, the Parliament also has enough ability to influence India's foreign policy behaviour. The Parliament, by using its various techniques, improvises contemporary foreign policy discourses and strengthen national security periodically. Furthermore, as the representative to the voice of the people, the parliament also democratise the foreign policy formulation process and includes citizen's inputs in policy making. The prime tool of influence is the floor of the Parliament itself, where the members of the house raise the foreign policy related concerns during the Parliamentary debate. Among the Parliamentarians, there used to be a group of expertise who kept tracking the global developments and raise voice against the perceived odds in the form of questions, discussion and motions. But the parliamentary involvement and its influence on foreign policy was limited when the Nehruvian monopoly was dominating India's foreign policy discourses (Murthza, 1998: 79). Till the 1962 Chinese war, the view of the parliament especially from the ruling party was idealistic and far from the national public opinion and it was only the Shastri era that witnessed the parliamentary involvement foreign policy decision-making. The parliamentarians tried to adopt the available techniques to approve, guide and supervise the external policies of the country. The tools used in this regard were the question hours, debates and discussions, parliamentary committees, financial control and motions and resolutions on the matter of foreign affairs.

Under its various rules, the Parliament of India enjoys absolute power to debate and discuss a range of issues related to the domestic and external affairs. It controls, supervises and influences the policy of government by using procedural tools, techniques and privileges, such as Parliamentary Debate, Question Hour and Half-an-Hour discussion, Ministerial Statement, Parliamentary Motion and Resolution, and Parliamentary Committee. Through these tools, it tries to minimize the governmental errors and modify and alternate the policy direction as per the public opinion. As the voice of the people, the Parliament keeps its concerns for the benefit of the people.

### **Role of Parliament as an Institution of Treaty Ratification**

As no state can remain isolated and estranged in the globalized world, international treaties became the effective instrument to establish and escalate the relationship

between and among the nations. Generally international treaties signed between the sovereign governments on behalf of the respective countries on matters regarding foreign relations, trade, environment, defence and strategic, war and peace, communications, ecology or finance. Hence, the treaties have immense potential to influence both internal and external policies of a country. However, the prior approval of the international treaties by parliament before implementation is not a universal procedure. The Parliament approval of the international treaties and agreements are mandatory in Denmark, Netherlands, Norway, Switzerland, Luxemburg, Laos, Indonesia and Japan. Whereas in India, Canada, U.K. and most of the British Commonwealth countries, the Parliament's nod is not necessary to implement the signed treaties unless it involves serious consequences (National Commission to Review the Working of the Constitution, 2001).

Under the Constitution of India, the Parliament is empowered to make any law on the items listed under the central list without any limitations, including matters related to foreign affairs (Constitution of India). Entry 14 also speaks exclusively for the implementation of International treaties and says "Entering into treaties and agreements with the foreign countries and implementing of treaties, agreements and conventions with foreign countries" (Constitution of India). Furthermore, article 253 also empowers the Parliament to make laws to implement the treaties. However, despite the constitutional provisions, treaty making and rectification in India is largely different from US and other European countries. Unlike the western democracies, the disapproval of the international treaties is a rare affair in Indian parliament (S. K. Verma 2004: 64). When the treaty is placed before the Parliament for discussion, the Parliament discusses on it like that of the other resolutions but cannot rectify the treaty according to the desire of the Parliament. Further, with backing of the majority, the government easily pass the treaty and hardly faces legislative blockade (Murtaza 1998: 63-65). The Parliament cannot make judgment on the certain provisions of the treaty or the treaty as a whole. Though several attempts have been made by introducing constitutional amendment bills, none of them have succeeded so far (Times of India 2008 Dec. 20).

## **Factors Eclipsing Parliamentary Role Foreign Policy Making**

The Parliament is an important institution of a democratic system of India and an integral branch of governance. It has been empowered to legislate laws and policies for the government, identifies the administrative errors and do the formal rectifies. However, in practice, policy making apparently the business of the executive domain and foreign policy is not an exception to this practice. At large, Parliament as an institution is able to influence the course of the foreign policy a bit through various Parliamentary mechanisms. Hence, the scope of the Parliament in making, guiding and supervising the foreign policy is very limited. Various factors are eclipsing the role of the Parliament in managing foreign policy of India. These factors are discussed below.

## **Party Affiliation and Personality Cult in Parliament**

Although the Parliament plays an important role in shaping the foreign policy of the country, it works under certain pressures, lobbies and influences. More than

that, it is the party ideology which dominates over the cognitive behaviour of a member during the Parliament debate. Similarly, leadership at some time also minimizes the influence of the Parliament's role in decision-making. The foreign policy making during Nehru, for example was a one man show and the Parliament had little influence over the policy behaviour. First of all Nehru was an icon of a great personality and enjoyed the confidence of the mass. Secondly, his personal hold on decision-making was so vast that others had little role to play. Thirdly, his image was so popular and acceptable for the people that it was not easy to oppose his decision at the floor of the Parliament. Therefore other members, especially party men had no way to support him. Secondly, majority of the member belongs to the ruling party of the government that makes policies. Hence they cannot go against the decision of the party. Therefore the Parliamentary debates have very little scope to influence the governmental decisions.

### **Executive Supremacy**

Though the Parliament legislates and approves policies, the executives, in practice make policies for the government and get it approved by the Parliament. There are several reasons behind the domination of the executives' in policy making. Firstly, the executives are Permanent agencies and therefore, have greater experience compared to the political heads who are elected for five years and possess less experience. Secondly, the executives are part of the larger organization which include expertise of different areas and make all round policies while political boss lacks. Thirdly, it is the executives who implement the policies hence, possess the first hand information regarding the concerned issue. Apart from that, the political leaders are busy in politics and paying less interest towards the policy formulation. Therefore, the executives enjoy supremacy in policy making, including foreign policy.

The superior, commendable role played by the executives has undermined the role of the Parliament in foreign policy making. While the executives make the decision for the government, the Parliament has limited scope to modify it. Often it has been seen that, most of the policies have been formulated by the executives and implemented with or without the approval of the cabinet and never presented before the parliament for discussion. Therefore the authoritative role of the executives has pushed the role of the Parliament into a secondary level in the foreign policy making.

### **Supremacy of the Cabinet**

In India, the cabinet plays a significant role in the policy making process. It is an elite institution which directly responsible to each and every matter of the government and enjoys more power compare to any other institutions, including the Parliament. It remains more influential in the policy making because of its proximity to the government and decides the fate of a decision in India. Most of the policies pass over to the Cabinet before they are introduced into the Parliament to decide. In case of any lacuna, it asks the executives to include new provision rather than seeking alternatives from the Parliament during the time of discussion. It also bypasses the Parliament and makes policies without introducing the proposal

into the Parliament. Though it is answerable to the Parliament, in reality it always posed sufficient political backing to maintain its dominance in government.

### **Confidentiality in Foreign Affairs**

The Parliament in its true spirit is an institution to raise the questions, debate and discuss the internal and external issues of the country and making policies to address these issues. Hiding anything from the public domain is against the basic ethos of the parliamentary system. However, matters related to national security, diplomacy and foreign policy need to be kept secret in order to protect them from reaching the hands of the enemy country. The government may deny disclosing such details on the floor of parliament. Hence, the parliamentary tools seem ineffective to discuss matters of these secretive natures, such as foreign policy.

### **Delay in Parliamentary Decision-Making**

The international environment is so fickle and vast that the time allotted for the Parliament is not sufficient to analyse and understand the emerging issues. It is also very difficult for the members to raise and debate certain issues within the allotted time in the Parliament. Neither the questioner nor the minister who responds to the questions can do justice to the issue when the Parliament awards them mere two to three minutes each. Secondly, due to the time factor, limited questions are allowed to each member, and they are allowed to raise issues at certain times. As a result, most of the Parliamentarians are interested in raising the local issues of their respective constituencies to win the votes rather than wasting time on the international issues.

### **Less Preference to Foreign Affairs**

The Members with knowledge on the Foreign Affairs are comparatively less in the Indian parliament. Except some experts, the foreign policy remains a less prioritized issue for discussion in the Parliament for most of the members. It can be seen by analysing the data of the Parliamentary debate. As more people are acquainted with the regional and national issues, they often prefer to raise the internal issues and hardly participate in discussion in matters of foreign affairs. It restricts the debate and discussion of matters related to foreign policy to certain level. As a result, the influence of the Parliament has been limited to issues on the foreign affairs.

### **Narrow Scope for Legislation**

The issues related to the foreign policy crisis needs negotiation rather legislation. There is nothing hardbound rule book called 'Foreign Policy' of a country according to which the country must interact with others. Rather, it is a flexible idea to negotiate with the rest of the world and hardly need legislations to guide it. Moreover, the international treaties and agreements which are not mandatory are get approved by the Parliament if it does not involve or affect the financial and other serious concerns. As a result most of the treaties are signed without the approval of the Parliament. In case it introduced into the Parliament, it cannot amend or modify any provision rather than approve it.



## **Parliament as a Machinery of Delay and Slow Process**

The Matters and issues of foreign policy need to be addressed instantly for the maximum gain. The delay in handling the issue may cost amenity to the country's security and sovereignty. But in the Parliament any system of decision-making is such a slow process that takes months and years together to reach any conclusion. The delay arises due to the size of the Parliament and passing of the proposal by multiple stages and the Parliamentary agencies. Consisting with the people of different interests and opinions, the Parliament is unable to take quick decision to address the issue and seems unfit to deal the matter of foreign affairs which require quite actions.

## **Practice of Unprofessionalism in Parliament**

Parliament is supposed to be the place of highly professionalism to debate and discuss important issues of the country and formulate the policies addressing these issues. But in recent past, the members apparently lack basic morality and other fight with each other with no point. Without going into the detail the government proposal, the opposition in many occasions opposes important bills with no reason. In recent past most of the precious time of the Parliament has been washed away due to the boycott and non-participatory approach of the oppositions in the Parliament sessions. Sometimes, important bills are turned into a law without proper discussion in the Parliament. If at all the members take part in the discussion, their arguments lack the logic. Therefore, the Parliament, on many occasions, fail to identify and criticize the weakness of the government on the matters of foreign policy.

## **Conclusion**

Being the highest institution and the ultimate voice of the people, the Parliament, in a democratic state like India plays an important role in the formulation and implementation of foreign policies in a variety of ways. It can legislate on any matter that comes under union list, including matters related to foreign affairs. The Parliament also influences the course of foreign policy by approving or rejecting any government proposal related to foreign policy and can create any specialized agencies and government institutions to deal with the matter related to foreign affairs like Foreign Service Institute and National Security Council; or merge or modify the function of the existing machinery or create new posts like National Security Advisor. Using its power of sanction, the Parliament can influence the making of foreign policy by reducing or increasing the overall or partial budgetary allotment to Ministry of External Affairs or Ministry of Defence or other allied agencies which might affect the India's foreign policy behaviour. In addition, Parliamentary debates and discussions also are considered one of the prime instruments to influence the process of foreign policy discourse.

The opposition and the other members of the Parliament point out the mistakes and give suggestions for better policies, during the Parliamentary debates. The Parliament poses unparalleled power to withhold, pass or reject any bill or resolution that is directly or indirectly related to India's external policy. Members of the Parliament also move adjournment, No-Confident or Cut-Motion, raise short or half-an hour discussion on any specific or an overall issue of the foreign policy.

Consultative committees of the Parliament, especially Standing Committee on Foreign Affairs has been playing significant role in shaping India's foreign policy behaviour. After all, the Parliament is considered as the face of the government and its behaviour and activities are always paid significant attention among the world communities.

But in practice, the Parliament despite all its powers and privileges has never been considered as one of the core actors of foreign policy decision-making in India. Government always bypasses the Parliament while making decision on important issues of foreign affairs. Though, the Parliament is empowered to legislate on any matter on foreign affairs, not many issues on the foreign and the defence policies have been referred to the Parliament for legislation. Unlike United States or Australia, it is not mandatory for international conventions, treaties and agreements to get approved by the Parliament before coming into practice. In Indian context, it is supposed to be the document of secrecy for optimum result and its open discussion in the parliament before actualization might endanger the entire goal of the treaty. Therefore, many of the treaties, such as the India-China Agreement of 1954, the Tashkent Agreement of 1965, the India-Soviet Agreement of 1971 and the Simla Agreement of 1972 have never been referred to the Parliament for debate before the conclusion of the treaty. Even the Parliament sometimes is delicately kept in dark on several national policies and serious issues on a number of occasions. The Parliament committees, which are supposed to guide the course of foreign policy, are often divided by the party ideologies, and the decisions that are coming up become the by-product of negotiation rather rational. That's why M.C. Chagla, the ex-foreign minister under Indira Gandhi government termed Consultative Committee on external affairs as "more of an agency for getting policies accepted and muting criticism than for influencing foreign policy".

Despite this, on many occasions the Parliament significantly influenced the foreign policy of India. For instance, Nehru's foreign policy towards china in the early periods used to be soft despite several border violations due to the overwhelming support of the Parliament. But, following the constant pressure in Parliament, Nehru forced to restructure his policies during late 1950s. The Parliament also successfully pressurized the Nehru government to disclose every single document on China, which was tabled in the form of white papers in the Parliament for discussion. Similarly, during the Hungarian Crisis of 1965, Nehru initially turned towards soviet, but after the stiff pressure from the opposition in the Parliament, he changed his stand subsequently. Prime Minister Indira Gandhi also changed her stand from separation to united Czechoslovakia during the 1968 Czechoslovak crisis under the strong criticism of oppositions. To conclude we can say that, the Parliament played a very minimal role in India's foreign policy decision-making until 1960, but with the emergence of strong opposition and other national parties, the influence of the Parliament has increased significantly.

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# Governance in Major Indian States: A Comparative Analysis of 2004 and 2014

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## Abstract

The political evolution in India has encouraged the politics of populism which deteriorates the quality of governance and similar policies give varying outcomes in different states. The capacity of the governments to encourage economic growth is manifested in the quality of their governance. India is one of the most populous democracies, with a federal set-up and the performance of its government - local, sub-national or national must be monitored. The theoretical concept of good governance evolved over time in the literature has not been incorporated in its measurement. In this backdrop, present paper is an attempt to construct an index of governance for 19 major Indian states for the years 2004 and 2014 and harmonize the same with its theoretical conceptualization using 35 indicators based on principles of good governance as given by UNDP (UNDP 1997). An overall governance index (G.I), along with the sub-dimensional indexes (S.D.I) for all the parameters (i.e. the eight principles of good governance) will be analyzed to study inter-state disparities and intra state temporal variations in governance performance. Such a measure of governance will be useful to highlight the link that governance has with service delivery as well as economic development. Results show that Maharashtra and Tamil Nadu scored the highest in 2004 and 2014 respectively, with Jharkhand and Madhya Pradesh at the bottom. Jharkhand witnessed the maximum improvement in governance ranks (up by eight ranks) due to significant improvement in accountability and effectiveness in provision of services. Four out of the top five states in 2004 remained at the top in 2014 as well. These states were Maharashtra, Gujarat, Tamil Nadu and Karnataka. On whether governance and growth are related, results show that there is a high positive significant correlation between the two.

**Keywords:** Economic Growth, Outcomes, Governance, Reforms, Service-Delivery

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## Introduction

The governments play an important role, not only in policy making, but also in its implementation, outcome monitoring and service delivery. All governments

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are not equally competent to carry out these functions effectively. The quality of governance differentiates one from the other. There has been a lot of focus on the impact of quality of governance on the nature and strength of economic growth and development. In the last couple of decades, a lot of literature has emerged on various aspects of governance, especially with respect to its quality, measurement, indices, impact etc. Governance has been defined and interpreted in different ways by different persons and institutions. Of the many definitions, the following have been widely accepted:

“Governance refers to the exercise of political and administrative authority at all levels to manage a country’s affairs. It includes the processes and institutions through which decisions are made and authority in a country is exercised.”(UNDP, UNESCO and UNDESA 2012)

According to Kaufmann, Recanatini and Biletsky, World Bank, governance relates to “the process and institutions by which authority in a country is exercised”. (Kaufmann, D., Recanatini, F., & Biletsky, S. 2002).

As defined by United Nations Development Programme, governance is viewed as “the exercise of economic, political and administrative authority to manage a country’s affairs at all levels. It comprises mechanisms, processes and institutions, through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences.” (UNDP 1997).

The “Implementation of the United Nations Millennium Declaration Report of the Secretary-General” (2003) emphasizes on “good governance to make the difference between noble aspirations and effective realization, together with effective institutions, adequate material resources and international support.”

The World Development Report 2017 on “Governance and the Law” attempts to “shift the focus of policy makers from what policies will be effective to why certain policies succeed, while others fail.” (World Bank Group, 2017). The report points to how rethinking about governance can enhance the implementation of policies for development.

It follows from these definitions of governance that there are some elements common across most definitions and these can be broadly organized into the principles of good governance. With growing literature on good governance highlighting what governments and institutions ought to do, principles of good governance have also attracted attention of policy makers at various levels. The United Nations Development Programme (UNDP) points to 8 major characteristics of good governance. These are (a) participation (b) rule of law (c) transparency (d) responsiveness (e) equity and inclusiveness (f) accountability (g) effectiveness and efficiency (h) consensus oriented. (UNDP 1997) Whether the principles of good governance are the means or ends of governance depends on the context in which they are discussed. As means to governance, the principles guide policy makers and governments through service delivery functions effectively. As an end, governance centers on institutions and rules to achieve them. The quality of institutions and rule of law then become the means to achieving good governance as defined by these principles. The concept of governance evolved to shift focus on issues of good governance in the late 1980s and early 1990s. The first noticeable shift was in 1996 Annual Meeting of the World Bank and the International Monetary Fund in which good governance and corruption issues were discussed explicitly. In the year 2000, the United Nations (UN) adopted Millennium Development Goals

(MDGs) and it became a turning point for (good) governance as a prerequisite for development. Thereon, governance issues have been a central part of policies of all the nations.

Good governance is not something that has come about only in the studies during the 1990s or in the beginning on the present century. The earliest works on governance are dated back to the years between 321 B.C. to 296 B.C. and to the widely recognized work of 'Arthashastra' by Kautilya. The work is based on the practical aspects of administration at various levels and hence, significant from the point of view of governance. In his book, Kautilya focuses on duties of the king as the foremost responsibility for the welfare of his people. The king is given extensive powers which he must use for the welfare of the people. A king is expected to behave in a righteous manner. (Ali 2006). What is implicit about governance in Arthashastra is the role of the ruling elite to take care of the welfare of the people and the service delivery functions of the state in today's world. An important role of state, as per neoliberal thought, is that of correcting market failures and reducing social disparities. Even though the market structures of today encompass a broad range of human activities, but certain basic human and political rights should not be bought and sold. (Schultze 2010). For example, excluding some aspects of health and education from the domain of markets, not because of reasons of inefficiency, but due to normative considerations. And market failure, if and when they arise, can be dealt with directly by correcting the reasons for market failure, or indirectly by state intervention. Such intervention can directly target growth and development of the nation by framing various policies to eradicate poverty and unemployment, control population growth, infrastructure provision, law and order, etc. But even governments fail, no matter how well-designed the policies are. If social welfare is not clearly defined, despite being enshrined in the constitution, then framing policies for the welfare of people might be wrongly targeted. The state in a democracy is expected to be representative of its citizens, but their true preferences might not always be reflected but due to the paradox of voting. But even if social welfare is clearly defined and the state is truly representative of its citizens, there arises political and other constraints in the implementation of policies. If voters comprise a heterogeneous community, lack of general acceptance of certain policies becomes a hindrance to implementation. Such factors lead to government failure and the rationale for state intervention gets ruled out. This is where the need for good governance arises. While governance is seen as an important variable to mitigate many problems of service delivery and other functions on the part of governments, the discussion becomes vague, and philosophical, when identifying the exact indicators that are required for improving the quality of governance. Thus, there is an urgent need to develop a credible measure for assessing quality of governance in various states that could provide a basis for policy-making and help users of such measures to assess the quality of their governments.

## **An Overview of Literature**

A number of governance indexes have been constructed by researchers, international organizations and think tanks in the last few years. The most prominent governance indexes at the international level include World Bank's

“WGI (Worldwide Governance Index) that comprise six dimensions of governance (voice and accountability, political stability and absence of violence/terrorism, government effectiveness, regulatory quality, rule of law and control of corruption)” (Kaufmann, Kraay and Mastruzzi 2010) and Mo Ibrahim Foundation’s “IIAG (Ibrahim Index of African Governance) that comprise four dimensions of governance, namely safety and rule of law, participation and human rights, sustainable economic opportunity and human development)” (Ibrahim 2018). The Mo Ibrahim Foundation constructs the IIAG measure of governance annually in African countries. The IIAG 2018 report shows that governance in the African countries is improving slowly. A total of 34 African nations witnessed an improvement in their overall governance score in the last ten years. The highest improvement was witnessed in Côte d’Ivoire, Morocco, and Kenya in the last decade. Mauritius ranked first and Somalia ranked last. Yong and Wenhao (2012) construct an index of governance for cities (in China) using seven dimensions of governance (legitimacy, efficiency, regulation, rule of law, integrity, participation and transparency). The results show Beijing is the top performer with respect to equality, efficiency, regulation and rule of law; Shenzhen and Chengdu were notable performers with respect to participation and transparency; and Changsha and Shenzhen with respect to integrity.

In the Indian context, prominent governance indexes constructed include the Public Affairs Index (PAI) prepared by the Public Affairs Centre, Bangalore for all the Indian states using annual data. PAI 2017 includes 82 indicators to arrive at the aggregate weighted index covering ten broad themes. These themes cover “essential infrastructure, support to human development, social protection, women & children, crime, law & order, delivery of justice, environment, transparency & accountability, fiscal management and lastly, economic freedom.” Based on the overall scores of states, Kerala ranked first, and amongst the small states, Himachal Pradesh ranked first. The worst performing states in the large and small categories were Bihar and Meghalaya respectively. (Matthew, Dutta, Narayanan & Jalodia 2017). Another notable contribution was by National Institute of Public Finance and Policy (NIPFP), New Delhi that constructed the Governance Performance Index for Indian states for the years 2001 and 2011. Their results show that the top five out of six high performing states (Gujarat, Tamil Nadu, Andhra Pradesh, Kerala and Punjab) continued to be the best performers in both the years under study i.e. 2001 and 2011. The four least performing states (Odisha, Jharkhand, Uttar Pradesh and Bihar) continued to remain at the bottom during both the years of study. This shows that regional disparities among the states have grown over time. With respect to service delivery, the states of Bihar and Chhattisgarh witnessed a significant improvement, highlighting the role of governance in these states in improving the quality of services delivered, unlike what is expected of them, given their low levels of development. (Mundle, Chowdhury & Sikdar 2016). While most of these indexes are comprehensive, but except for the WGI by World Bank, they lack synchronization with the conceptual framework on governance.

The literature on the developmental aspects of governance has varied conclusions across studies. While some studies focus on establishing a direct link between governance and development (Burnside & Dollar 1998, Azam & Emirullah 2014 and Rahman 2010), others highlight the importance of having better institutions to broaden the developmental impacts of governance. (Rodrik 2003). Good

governance in the form of inclusive and transparent policies that help ease doing business create an environment suitable for increased investments, thereby leading to faster growth. Better accountability structures, both internal and external, can lead to better institutional performance (World Bank 2002). Broadly, the literature on governance and development reveals that good governance and growth move in the same direction (Burnside & Dollar 1998), governance can be improved via fiscal decentralization (Huther & Shah 1998) and public sector reforms can strengthen governance (World Bank 2000, 2003). According to Kaufmann and Kraay “while better governance tends clearly to promote economic growth, growth *per se* does not tend to promote better governance” (Arndt and Oman 2006). Also, the link between governance and poverty reduction is ambiguous. While there is empirical evidence to suggest that weak governance reinforces poverty (Daoud 2015), the link between governance and poverty reduction is simply assumed to be existing. Good governance can help eradicate poverty if policy makers have the knowledge of the state of affluence prevailing in the economy. Hence, it can be said that positive developmental outcomes depend upon various factors, and one of them is good governance.

## **Rationale of the Study**

This study highlights the role played by the state in providing public goods and services to its citizens. India is the most populous democracy in the world and the well being of its citizens depends, to a large extent, on the efficient functioning of its government. The role played by the federally set-up government is also crucial for economic growth and the same must be monitored. To analyze the performance of Indian government, whether local, sub-national or national, it is imperative to have an appropriate measure of performance for the same. The key issue that prohibits objectivity in governance relates to the absence of measurable data on the quality of governance, particularly at the sub-national level. The present paper attempts to construct an index of governance performance for 19 major Indian states for the years 2004 and 2014 by harmonizing the theoretical framework with the most representative indicators based on principles of good governance as given by UNDP (UNDP 1997). Such a measure of governance is useful to highlight the link that governance has with service delivery as well as economic development. Along with an overall governance index (G.I.), this paper also attempts to construct the sub-dimensional indexes (S.D.I) for all the parameters (i.e. the eight principles of good governance) for the two years. It also analyses the governance scores of Indian states during the two reference points to study inter-state disparities and intra state temporal variations in governance performance.

## **Data and Methodology**

For the construction the governance index (G.I.) the sub-dimensions are derived from the principles of good governance as given by UNDP (i.e. participation, rule of law, transparency, responsiveness, equity and inclusiveness, accountability, effectiveness and efficiency and strategic vision) (UNDP 1997) for 19 major Indian states for the years 2004 and 2014. Secondary annual data has been taken from publications and reports by Reserve Bank of India (RBI), Census of India, National Sample Survey, National Crime Records Bureau and required data



compiled by Economic and Political Weekly Research Foundation (EPWRF) and the website [indiatat.com](http://indiatat.com).

In order to construct the index, all variables need to be normalized to a common scale. This means to free them from differences in the units of measurement. So if the dataset were to include indicators like length of state highways (the unit of measurement for which is kms) and per capita availability of power (the unit of measurement for which is kw/h), the absolute values of the same would not yield comparable figures. Normalization makes them comparable and includible for the index construction and all the values get converted in the scale of 0 to 1. Following are the MIN-MAX normalisation formulae that are used to convert the values to the normalised scale:

- For variables which yield a positive impact on the index when their values are high (higher the better):

$$\left[ \frac{\text{Actual Value} - \text{Minimum Value}}{\text{Maximum Value} - \text{Minimum Value}} \right]$$

- For variables which yield a negative impact on the index when their values are high (lower the better):

$$\left[ \frac{\text{Maximum Value} - \text{Actual Value}}{\text{Maximum Value} - \text{Minimum Value}} \right]$$

The overall governance score is calculated by taking the average of all sub-dimensional indexes. The index for each of the sub-dimensions of governance is calculated in the following manner:

$$\text{S.D.I} = 1/N (DV_1 + DV_2 + \dots + DV_n)$$

$$\text{S.D.I} = \frac{\sum_{j=1}^n DV_{ij}}{n}$$

S.D.I = Sub Dimensional Index of governance for i-th state at t-th time period, the value of which ranges between zero and one

$DV_{ij}$  = value of the normalized variables which are a constituent part of the Sub Dimensional Index of governance (SDI)

n = number of normalized variables for each dimension

j = 1.....n

**Aggregation and Weighting:** As there is no generally agreed method of aggregation and assignment of weights to the indicators in composite indexes, any explanation to the variation in weights assigned to the indicators adds subjectivity and bias to the same. Hence, this study assigns equal weights to the sub-dimensions of governance index and further to their indicators. The difference in the number of indicators under various sub-dimensions would result in an implicit differential weighting. To overcome this, the average of all indicators under various sub-dimensions is taken to wipe out such implicit differential weighting.

$$\text{D.I.} = 1/N (\text{S.D.I.}_1 + \text{S.D.I.}_2 + \dots + \text{S.D.I.}_N)$$

$$G.I. = \frac{\sum_{j=1}^N S.D.I_{ijtj}}{N}$$

Where,

G.I. = Overall Governance Index

S.D.I= Sub Dimensional Index of governance for i-th state at t-th time period.

N = number of sub-dimensions

j = 1.....N

**Table-I:** Variables for Constructing the Index of Governance

OVERALL GOVERNANCE	SDI 1: Participation	a. Percentage strength of women judges in High Courts b. Percentage strength of women in police forces
	SDI 2: Rule of Law	a. Rate of violent crimes b. Incidence of crime against women c. Incidence of crime against children
	SDI 3: Accountability	a. Newspapers registered with Registrar of Newspapers for India b. Registration rate of complaints received against police
	SDI 4: Responsiveness	a. Disposal to pendency rate of High Court cases b. Vacancies in High Courts c. No. of policemen per 100 sq km
	SDI 5: Equity/ Inclusiveness	a. Expenditure on rural development b. Expenditure on small and village industries c. SC enrolment in higher education in all courses d. ST enrolment in higher education in all courses
	SDI 6: Effectiveness (of provision of services)	a. Percentage of rural electrification b. Teledensity (telephones per 100 population) c. Expenditure on irrigation d. Expenditure on power e. Expenditure on roads and bridges f. Length of state highways g. Per capita power consumption
	SDI 7: Efficiency	a. Gross fiscal deficit b. Interest payments as % of SDP c. Expenditure incurred on tax collection d. State's own tax revenue e. State's own non-tax revenue
	SDI 8: Strategic Vision	a. Total literacy rates b. Expenditure on education c. Achievement rate of BCG immunization d. Achievement rate of measles immunization e. Maternal Mortality Rate f. Infant Mortality Rate g. Total government hospitals h. Expenditure on social services i. Forest area as a percentage of total area

## **Governance Performance of Major Indian States**

The values of governance index of major Indian states computed using the methodology stated in the previous section for the said years have been used to calculate the ranks of the respective states. Based on their rankings, the states have been analyzed for their governance performance over the said reference period. Table-2 highlights the governance scores for the states during 2004 and 2014 along with their governance ranks and the temporal change in rankings.

**Table-2:** Governance Scores and Ranks of Major Indian States During 2004 and 2014

<b>STATES</b>	<b>Governance Index Score (2004)</b>	<b>Governance Rank (2004)</b>	<b>Governance Index Score (2014)</b>	<b>Governance Rank (2014)</b>	<b>Change</b>
Andhra Pradesh	0.444112	6	0.5015	4	+2
Assam	0.358948	14	0.349827	16	-2
Bihar	0.374952	12	0.343479	18	-6
Chhattisgarh	0.326829	18	0.349695	17	+1
Gujarat	0.513297	2	0.514407	3	-1
Haryana	0.380481	11	0.419993	8	+3
Himachal Pradesh	0.33522	17	0.403478	13	+4
Jharkhand	0.305932	19	0.411512	11	+8
Karnataka	0.481334	4	0.48294	5	-1
Kerala	0.451033	5	0.41759	9	-4
Madhya Pradesh	0.345342	16	0.341046	19	-3
Maharashtra	0.522343	1	0.572469	2	-1
Odisha	0.351347	15	0.412555	10	+5
Punjab	0.442503	7	0.459373	6	+1
Rajasthan	0.364659	13	0.425287	7	+6
Tamil Nadu	0.503254	3	0.621178	1	+2
Uttar Pradesh	0.407501	9	0.387495	14	-5
Uttarakhand	0.381081	10	0.384327	15	-5
West Bengal	0.41425	8	0.408758	12	-4

Source: Authors' calculation

From Table-2, the top five performing states in 2004 were Maharashtra, Gujarat, Tamil Nadu, Karnataka and Kerala. The bottom five states in the same year were Jharkhand, Chhattisgarh, Himachal Pradesh, Madhya Pradesh and Odisha. The best performing state was Maharashtra, while the least performing state was Jharkhand. In 2014, the top five performing states were Tamil Nadu, Maharashtra, Gujarat, Andhra Pradesh and Karnataka. The bottom five states were Madhya Pradesh, Bihar, Chhattisgarh, Assam and Uttarakhand. Tamil Nadu was the highest performer in 2014, while Madhya Pradesh was the lowest performing state.

The changes in rankings between 2004 and 2014 reveal some significant results about the improvements made or downfalls witnessed by the states. Jharkhand, which was the least performing state in 2004 moved up 8 ranks from 19 to 11 and witnessed the highest improvement out of all states. The other states that witnessed significant improvements in governance ranks include Rajasthan which moved up 6 points, followed by Odisha which moved up 5 points, Himachal Pradesh moved up by 4 points and Haryana moved up by 3 points. The other states which improved but slightly include Andhra Pradesh, Tamil Nadu, Chhattisgarh and Punjab.

States that witnessed deterioration in their rankings include Bihar, which moved down by 6 points in its rankings, followed by Uttar Pradesh and Uttarakhand which deteriorated by 5 points each, Kerala and West Bengal by 4 points. Madhya Pradesh moved down 3 points to become the least performing state in 2014. The other states that witnessed a slight deterioration in their governance rankings were Assam, Gujarat, Karnataka and Maharashtra.

Out of the top five performing states in 2004, four states continued to be at the top five in 2014. These states were Maharashtra, Gujarat, Tamil Nadu and Karnataka. Kerala, which was in the top 5 in 2004 moved out of the upper bracket in 2014 and was replaced by Andhra Pradesh. Madhya Pradesh and Chhattisgarh continued to remain in the bottom five for both the years. Jharkhand, Himachal Pradesh and Odisha got replaced by Bihar, Assam and Uttarakhand in the bottom five rankings in 2014.

The values of sub-dimensional indexes (as given in Tables-A and B of Appendix) reveal some interesting findings. The states that gained the most (with respect to their overall governance scores) during the reference period of study include Jharkhand, Rajasthan and Odisha. Jharkhand, which gained eight ranks, witnessed the highest improvement in performance with respect to accountability and effectiveness in provision of services. On comparing the absolute values of all sub-dimensional indexes, the value of 'rule of law' index has been highest for Jharkhand for both the years. Rajasthan, which gained six ranks, witnessed the highest improvement in performance owing to participation, responsiveness and equity/ inclusiveness. But the absolute values of rule of law index in 2004 and participation index in 2014 were the highest for Rajasthan. Odisha, which gained five ranks, witnessed the highest improvement in performance with respect to participation. And with respect to absolute values of all sub-dimensional indexes, the rule of law index in 2004 and participation index in 2014 were the highest for Odisha.

The states that witnessed most deterioration (with respect to their overall governance scores) during the reference period of study include Bihar, Uttar Pradesh and Uttarakhand. The performance of Bihar, which slipped six ranks, deteriorated with respect to accountability and participation. But the absolute values of strategic vision index in 2004 and accountability index in 2014 were the lowest for Bihar. Uttar Pradesh, which slipped five ranks during the two years, witnessed the most deterioration due to poor performance in rule of law. On comparing the absolute values of all sub-dimensional indexes, the value of responsiveness index has been lowest for Uttar Pradesh for both the years. Uttarakhand, which also slipped five ranks, witnessed the most deterioration due to poor performance with respect to responsiveness and strategic vision. And with respect to absolute values of all sub-dimensional indexes, the accountability index in 2004 and equity and inclusiveness index in 2014 were the lowest for Uttarakhand.

An overview of the inter-state and intra-state governance performance is given in Table-A and Table-B in the Appendix. Within each state, the highest and lowest scores of sub-dimensional indexes have been highlighted in green and yellow respectively. Of all the sub-dimensional indexes, majority of the states performed poorly with respect to accountability and participation in the year 2004; and accountability and responsiveness in the year 2014. On the other hand, majority of the states performed well with respect to rule of law during both the years.

## Correlation Between Governance Index and Growth

There is a general agreement that the quality of governance matters for development outcomes. “While better governance tends clearly to promote economic growth, growth *per se* does not tend to promote better governance” (Arndt and Oman 2006). But there are some who argue that strong long term growth could be the result of powerful vested interest groups building up at the expense of governance. For example, China and dictatorships of south-east Asia achieved spectacular economic growth in 1970s and 1980s.

The correlation between governance scores of major Indian states and their gross state domestic products is calculated in this study. Results show a significantly high positive correlation between the two. Table-3 shows the results of the correlation for the years 2004 and 2014.

**Table-3:** Correlation between GSDP and Governance Scores of Major Indian States (2004 and 2014)

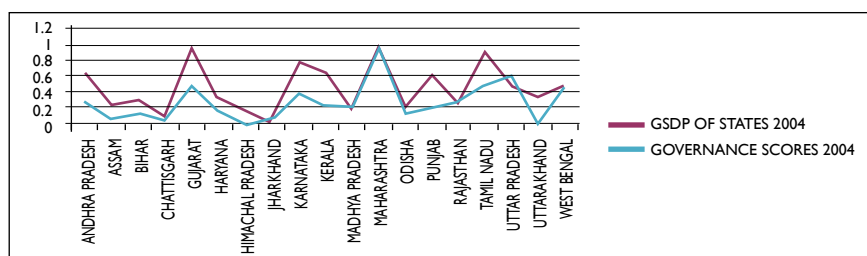
State Domestic Product		Governance Score (2004)	Governance Score (2014)
	Pearson Correlation	.744**	.690**
	Sig. (1-tailed)	.000	.001
	N	19	19

Note: \*\*. Correlation is significant at the 0.01 level (1-tailed).

Source: Author's calculation

The results show that governance and growth (as highlighted in the gross state domestic product) have a significantly high positive correlation of 0.744 during the year 2004 for the major Indian states. Graph 1 shows that the trend lines of GSDP and governance scores of all the states roughly follow the same path. States with a peak in GSDP had a corresponding peak in their governance scores as well. Similarly, states with a trough in GSDP had a corresponding trough in their governance scores. These findings go alongside what the literature on governance and development suggests. Broadly, the literature highlights that variations in governance performance and macroeconomic management yield variations in overall performances across nations (Togolo 2006), good governance is crucial for MDGs to create an environment conducive for their achievement (UNESCAP, UNDP, ADB 2006), good governance is not self-generating and need arises for policy makers and civil society to contribute to good governance through a direct enabling environment. This is to be supplemented with high level of human capital, competent public service, independent judiciary and open and transparent public institutions (Rahman 2010).

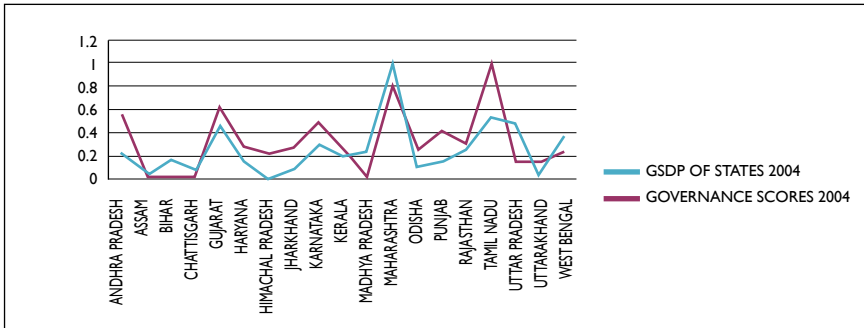
**Graph-I:** GSDP and Governance Scores of States in 2004



Source: Authors' formulation based on data procured from EPWRF

The results of correlation between governance and growth for the year 2014 are similar to 2004. Graph 2 shows the results for 2014. The value of correlation coefficient between governance and growth has been found to be 0.690 and significant at 0.01 level. The graph below also suggests the same path for trends lines drawn on SDP and governance scores of the states for 2014. These results show that governance and growth are highly correlated.

**Graph-2:** GSDP and Governance Scores of States in 2014



## Conclusion

In this paper an index of governance for 19 major Indian states for the years 2004 and 2014 was constructed. The sub-dimensions of the overall index were derived from the principles of good governance as given by UNDP. After identifying the most relevant quantifiable variables for the same, the governance index was constructed by averaging the average scores of all the sub-dimensions. This method takes care of differentials in weights that arise due to the unequal number of variables taken under each sub-dimension. After calculating the governance scores, ranks were assigned to each state for both the years selected in this study and the subsequent changes in these ranks were analyzed. Results show that Maharashtra was the highest performer in the year 2004, while Jharkhand was at the bottom. In 2014, Tamil Nadu was the top scoring state and Madhya Pradesh slipped to the lowest rank. The state of Jharkhand (which was the lowest performer in 2004) witnessed the maximum improvement in governance ranks as it moved up eight ranks in between these years. This was owing to a significant improvement in performance of the state with respect to accountability and effectiveness in provision of services. The state of Bihar, which witnessed the maximum deterioration in governance performance over the time period, was due to poor performance of the state with respect to accountability and participation. Out of the eight sub-dimensions, majority of the states scored well on rule of law, but scored low on accountability during 2004 as well as 2014. Madhya Pradesh was at the bottom rank with respect to rule of law during both the years. And with respect to strategic vision, Maharashtra ranked at the top for both the years. All the other sub-dimensions had varying performances by the other states. Four out

of the top five states (with respect to overall governance performance) in 2004 remained at the top 5 positions in 2014 as well. These states were Maharashtra, Gujarat, Tamil Nadu and Karnataka. From the lowest performing states, Madhya Pradesh and Chhattisgarh continued to remain at the bottom in both the years. This highlights that the governments in these states have not changed much to further improve (in case of top performers) or lift up (in case of bottom performers) the governance of their states, except for the states that witnessed improvements in their scores as well as rankings. Apart from this, the literature on governance and growth suggests that the two are related. To test this, the correlation between the gross state domestic product and the state's governance scores was computed and the results go along with what the literature on the same suggests. The results show that there is a high positive significant correlation between governance and growth. The trend lines of states' overall governance scores and gross state domestic products also followed similar pattern (i.e. the direction of movement was similar) for all the states for both the years. The further scope of the findings of this paper relates to which of these two is the cause and which is the effect. A causal analysis can be conducted to study the same. The literature on this aspect has given varying conclusions and any addition to the issue would be a valuable one.

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## Appendix

Table-A: Sub-Dimensional Index and Governance Index scores for the year 2004

STATES	SDI-1	SDI-2	SDI-3	SDI-4	SDI-5	SDI-6	SDI-7	SDI-8	G.I.
Andhra Pradesh	0.126832	0.48949	0.39714	0.289488	0.529793	0.643108	0.600881	0.476166	0.444112
Assam	0.030178	0.576841	0.513982	0.486117	0.263289	0.196407	0.574814	0.229955	0.358948
Bihar	0.567532	0.569373	0.260429	0.599629	0.168032	0.173125	0.494054	0.167439	0.374952
Chhattisgarh	0.046247	0.741336	0.01506	0.333333	0.29951	0.237124	0.604685	0.33734	0.326829
Gujarat	0.666667	0.812193	0.144116	0.29978	0.420182	0.706548	0.636893	0.419996	0.513297
Haryana	0.196429	0.857469	0.05862	0.424652	0.047086	0.442346	0.689584	0.327664	0.380481
Himachal Pradesh	0.063329	0.886188	0.003486	0.525283	0.034772	0.372872	0.400876	0.394958	0.33522
Jharkhand	0.091792	0.712018	0.000838	0.461124	0.220089	0.083493	0.610821	0.26728	0.305932
Karnataka	0.220296	0.751074	0.236447	0.428512	0.467222	0.532551	0.791604	0.42297	0.481334
Kerala	0.31247	0.607038	0.101687	0.741934	0.268899	0.44731	0.561253	0.567673	0.451033
Madhya Pradesh	0.262665	0.235861	0.20952	0.272787	0.44674	0.343287	0.647721	0.344154	0.345342
Maharashtra	0.443231	0.500635	0.370905	0.39396	0.536483	0.67118	0.518365	0.74398	0.522343
Odisha	0.08792	0.812902	0.343006	0.314986	0.137255	0.196458	0.543606	0.374646	0.351347
Punjab	0.253709	0.963365	0.063083	0.567736	0.016439	0.594884	0.701645	0.379162	0.442503
Rajasthan	0.462305	0.618152	0.205913	0.090223	0.303392	0.386568	0.552482	0.298239	0.364659
Tamil Nadu	0.380206	0.753344	0.296814	0.468465	0.339408	0.569249	0.694358	0.524191	0.503254
Uttar Pradesh	0.212951	0.498351	0.532869	0.163507	0.571417	0.415606	0.505813	0.359492	0.407501
Uttarakhand	0.315967	0.895036	0.043454	0.491432	0.053584	0.207164	0.521997	0.520013	0.381081
West Bengal	0.215205	0.78756	0.331082	0.404577	0.3332	0.295892	0.453264	0.49322	0.41425

Note: The text highlighted in green correspond to the highest SDI value of each state, while that in yellow correspond to the lowest SDI value of each state.

Source: Authors' own calculation

Table-B: Sub-Dimensional Index and Governance Index scores for the year 2014

STATES	SDI-1	SDI-2	SDI-3	SDI-4	SDI-5	SDI-6	SDI-7	SDI-8	G.I.
Andhra Pradesh	0.250396	0.826882	0.529378	0.30665	0.592788	0.618523	0.412937	0.474448	0.5015
Assam	0.263889	0.485251	0.3021	0.441023	0.222309	0.174112	0.558616	0.351317	0.349827
Bihar	0.395547	0.62777	0.061367	0.56018	0.118177	0.206006	0.474272	0.304514	0.343479
Chhattisgarh	0.146446	0.727865	0.037594	0.444343	0.197976	0.313459	0.600788	0.329085	0.349695
Gujarat	0.424286	0.851536	0.329963	0.479627	0.412584	0.596265	0.587297	0.433696	0.514407
Haryana	0.748986	0.64339	0.04648	0.447937	0.049014	0.513635	0.537882	0.372621	0.419993
Himachal Pradesh	0.441123	0.936252	0.009768	0.65368	0.018684	0.315953	0.410317	0.442047	0.403478
Jharkhand	0.183679	0.834499	0.50332	0.427191	0.225455	0.256033	0.585536	0.276382	0.411512
Karnataka	0.380038	0.661606	0.506865	0.318403	0.475038	0.568504	0.450997	0.502069	0.48294
Kerala	0.34107	0.672166	0.17538	0.642297	0.154371	0.270419	0.430982	0.654038	0.41759
Madhya Pradesh	0.355605	0.243713	0.267709	0.332166	0.435859	0.370499	0.504286	0.218531	0.341046
Maharashtra	0.805305	0.454503	0.472667	0.407101	0.477714	0.740547	0.487128	0.734788	0.572469
Odisha	0.4813	0.638188	0.374731	0.371135	0.244127	0.15757	0.648901	0.384488	0.412555
Punjab	0.74006	0.899885	0.074427	0.595478	0.037091	0.469129	0.445652	0.413266	0.459373
Rajasthan	0.621001	0.558767	0.20839	0.286595	0.508054	0.403217	0.49139	0.324886	0.425287
Tamil Nadu	0.868217	0.86475	0.630832	0.497506	0.520242	0.519446	0.540904	0.527525	0.621178
Uttar Pradesh	0.332441	0.279456	0.542931	0.133332	0.496726	0.571585	0.425432	0.318054	0.387495
Uttarakhand	0.325181	0.930579	0.09521	0.429856	0.036458	0.273473	0.513585	0.470273	0.384327
West Bengal	0.563028	0.396911	0.288297	0.459225	0.507872	0.256378	0.204009	0.594346	0.408758

Note: The text highlighted in green correspond to the highest SDI value of each state, while that in yellow correspond to the lowest SDI value of each state.

Source: Authors' own calculation

# A Study on Growth of Capital Adequacy, Profitability and Liquidity Analysis of Indian Public and Private Sector Banks in the Post Financial Crises Period

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## Abstract

Banks are prime intermediaries in mobilizing resources and channelling resources to various sectors of the economy. Complimentary and sufficient stream of bank credit has a positive impact taking place on the development of the sector and directly contributes towards increased national income, national production and employment. The key aim of this work is to inspect the growth of capital adequacy, profitability and liquidity analysis of Indian government owned and private owned banks during the post financial crises period. The study phase covers 10 years period from 2008-2009 to 2017-2018. For the purpose of the work, the cluster sampling method has been adopted to select 10 public and private sector banks based on the rank of the banks which have the maximum contribution to Non-performing Assets. The government owned banks namely, the SBI, Punjab National Bank, IDBI Bank, Bank of India, Bank of Baroda, Union Bank of India, Central Bank of India, Canara Bank, Indian Overseas Bank and UCO Bank and from the private sector banks namely, ICICI Bank, Axis Bank, Jammu and Kashmir Bank, HDFC Bank, Kotak Mahindra Bank, Karur Vysya Bank, Federal Bank, Yes Bank, Lakshmi Vilas Bank, and South Indian Bank are chosen for the study. The data analysis is done using ratio analysis, descriptive statistics like mean, standard deviation, coefficient of variation, compound annual growth rate and t-test.

**Keywords:** Capital Adequacy, Descriptive Statistics, Growth, Liquidity, Post Financial Crises Period, Profitability and t-test

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## Introduction

Banks are prime intermediaries in mobilizing and channelling resources to various sectors of the economy. Free and enough stream of bank credit has an

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optimistic impact on the growth of the sector and directly contributes towards increased national income, national production and employment. As a result, it is unnecessary to emphasize that the health of banks has a direct bearing on the health of the economy. The credit functions of banks enhance the ability of investors to exploit desired profitable ventures. Credit creation is the main income generating activity of banks. However, it exposes the banks to credit risk. The Basel committee on banking supervision defined the credit risk as the possibility of losing the outstanding loan partially or totally due to credit events. Credit risk is the primary factor for financial crises and it is a most important concern for lenders worldwide as it is the for the most part important of each and every one risks faced by the banking institutions. Credit risk exists because an expected payment might not occur. Poorly managed credit risk and liquidity risk will result in financial losses for banks, donors, investors, lenders, borrowers and savers. This is because all tend to lose confidence in banks and funds begin to dry up and while funds dry up, the banks are not able to meet its objective of providing services, it causes quickly goes out of business. The successful administration of credit risk coverage, banks not simply hold up the possibility and effectiveness of their business, they also put in to efficient and well-organized part of resources in the economy.

## **Review of Literature**

Nabila Zribi and Younes Boujelbene (2011)<sup>1</sup> discussed the factors influencing bank credit risk: the case of Tunisia. The main intention of the work is to inspect the determinants of bank credit risk in Tunisia. They conclude that the main determinants of bank credit risk in Tunisia are: ownership structure, prudential regulation of capital, profitability and macroeconomic indicators.

Somanadevi Thiagarajan and Ayyappan et al. (2011)<sup>2</sup> explained the credit risk determinants of public and private sector banks in India. The core principle of their study was predicting the various factors of credit risk in the Indian commercial banking sector by using an econometric model. The results showed to facilitate the lagged non-performing assets and had a strong and statistically significant positive influence on the current NPAs. There is a major inverse relationship between the GDP and the credit risk for both public and private sector banks. The study reveals that both macroeconomic and bank-specific factors play a crucial role in determining the credit risk of the commercial banking sector.

Ogboi, Charles and UNUAFF (2013)<sup>3</sup> studied the effect of credit risk management and capital adequacy on the financial performance of commercial banks in Nigeria. The goal of their learning is to investigate the impact of credit risk management and capital adequacy on the financial performance of commercial banks in Nigeria. The study concludes that the sound credit risk management and capital adequacy showed the impact positively on bank's financial performance with the exception of loans and advances which was found to have a negative crash on banks' success in the time under study.

Asha Singh (2015)<sup>4</sup> in her report the effect of credit risk management on private and public sector Banks in India. The most important aim of her work is to scrutinize the effect of credit risk management on private and government banks in India. The conclusion reveals the extent of NPA is comparatively higher in public sectors banks. To improve the efficiency and profitability, the NPAs have

to be scheduled. Different steps have been engaged by a government to reduce the NPAs. CAR is top in casing of private sector banks. All government banks have to work on enhancing their capital adequacy. His study concludes that the private sector banks are performing the better than public sector banks. The study concludes that the banks need to build up its capital adequacy ratio and control its non-performing assets.

Atakelthailu asfaw and P.Veni (2015)<sup>5</sup> made a study on Determinants of Credit risk in Ethiopian Private Commercial Banks. The major objective of the study analyzing the link between the bank-specific factors and macro-economic factors, they used a panel data set over the period of 2006-2012. The study concludes that the credit growth and return on assets has been negative impact on Credit risk indicators of the Ethiopian private commercial banks.

## **Statement of the Problem**

The banking sector has a fundamental role in the expansion of an economy. It is the input driver of economic improvement of the nation and achieves greatest efficiency. In fact, basis of a good financial system depends on how banking sector perform in the vice versa. Banks today are the largest financial institutions around the world, with branches and subsidiaries which impact everyone's life. Banks are profit creation organizations and the mediators of connecting borrowers as well as lenders in bringing conditionally accessible resources starting business. The banks also help to individual customers as well as given that loans for those requires the financial needs. There are plenty of differentiations between types of banks and much of this differentiation rests in the products and services that banks offer. Commercial Banks plays the important role in developing economies like India. Bank lending is very crucial since it makes possible the financing of agricultural, commercial and industrial needs of the nation. Commercial Banks are entrusted with the funds of depositors. These funds are generally used by banks for their business. The fund belongs to the customers so a programme must exist for the management of these funds. The curriculum has to continuously deal with three fundamental objectives: liquidity, safety and income. Successful management calls for a proper balancing of all these three. Liquidity enables the banks to rally loan burden of their expensive and stretched recognized customers. The second objective being safety is to avoid undue risk since banks meet the responsibility of protecting the deposit entrusted to them. Proper and prudent management of banks creates customer confidence. The third is income which is projected the development and expansion to meet repayment of interest charges on debt, to achieve the objective of maximizing the wealth of shareholders. Therefore, it is attempted to make a study to examine the growth of capital adequacy, profitability, and liquidity analysis of Indian public and private owned banks in the post financial crisis period. This raises the following research questions:

- How did the state owned and private owned banks perform, in terms of growth of capital adequacy, profitability in addition to liquidity of post financial crises period?

## **Purpose of the Study**

- To examine the growth of capital adequacy, profitability, and liquidity investigation of Indian state owned and private owned banks in the post financial crisis period.

## **Hypothesis of the Study**

- There is no significant relationship among bank capital adequacy, profitability and liquidity analysis of Indian public and private sector banks in the post financial crisis period.

## **Research Methodology**

### ***Sources of Data***

The present study is primarily based on derived data. The information for this study has been collected from Centre for Monitoring Indian Economy prowess database, annual reports of banks, annual reports published by RBI, money control website and Department of banking supervision.

### ***Period of the Study***

The study phase covers 10 years from 2008-2009 to 2017-2018.

### ***Selection of the Sample***

For the purpose of the study, the cluster sampling method has been adopted to select ten state owned and private owned banks based on the banks' share in Non-performing Assets. From state owned banks namely, the State Bank of India, Punjab National Bank, IDBI Bank, Bank of India, Bank of Baroda, Union Bank of India, Central Bank of India, Canara Bank, Indian Overseas Bank and UCO Bank and from the private owned banks namely, ICICI Bank, Axis Bank, HDFC Bank, Jammu and Kashmir Bank, Kotak Mahindra Bank, Karur Vysya Bank, Federal Bank, Yes Bank, Lakshmi Vilas Bank, and South Indian Bank are chosen for the study.

## **Tools for Analysis**

The data analysis is done through ratio analysis, descriptive statistics like mean, standard deviation, coefficient of variation, compound annual growth rate and t-test.

## **Limitations of the Study**

- The present study was carried out on the selected twenty banks from the state owned and private owned banks in India. Therefore the inferences may not represent the entire banking business in India.
- The required data were collected from the secondary resource it may inherent limitations of published financial statements.
- The suggestions and conclusion cannot be generalized to the foreign banks, regional rural banks and cooperative banks.

**Table-I: Capital Adequacy Ratio of Select Public and Private Sector Banks in India**  
(in Percentage)

YEAR	Public Sector Banks										Private Sector Banks									
	SBI	PNB	IDBI	BOI	BOB	UBI	CB	CBI	IOB	UCOB	ICICI	AXB	HDFC	J&K B	KMB	KVB	FB	YB	LVB	SIB
2009	14.25	14.03	10.70	13.01	14.05	13.27	14.10	13.12	13.20	11.93	15.53	13.69	15.69	14.48	20.01	14.92	20.22	16.60	10.29	14.76
2010	13.39	14.16	11.57	12.94	14.36	12.51	13.43	12.33	14.78	13.21	19.41	15.80	17.44	15.89	18.35	14.49	18.36	20.60	14.82	15.39
2011	11.98	12.42	11.31	12.17	14.52	12.95	15.38	11.64	14.55	13.71	19.54	12.65	16.22	13.72	19.92	14.41	16.79	16.50	13.19	14.01
2012	13.86	12.63	13.64	11.95	16.67	11.85	13.76	12.40	13.32	12.35	18.52	13.66	16.52	13.36	17.52	14.33	16.64	17.90	13.10	14.00
2013	12.92	12.72	14.58	11.02	13.30	11.45	12.40	11.49	11.85	14.15	18.74	17.00	16.80	12.83	16.05	14.41	14.73	18.30	12.32	13.91
2014	12.44	11.52	13.13	9.97	12.28	10.80	10.63	9.87	10.78	12.68	17.70	16.07	16.07	12.69	18.83	12.59	15.14	14.40	10.90	12.42
2015	12.00	12.21	11.68	10.73	12.61	10.22	10.56	10.90	10.11	12.17	17.02	15.09	16.79	12.57	17.17	14.62	15.46	15.60	11.34	12.01
2016	13.12	11.28	11.76	12.01	13.18	10.56	11.08	10.40	9.67	9.63	16.64	15.29	15.53	11.81	16.34	12.17	13.93	16.50	10.67	11.82
2017	13.11	11.66	11.67	12.14	12.24	11.79	12.86	10.94	10.49	10.93	17.39	14.95	14.55	10.80	16.77	12.54	12.39	17.00	10.38	12.37
2018	12.60	9.20	10.41	12.94	12.13	11.50	9.04	11.08	9.25	10.94	18.82	16.57	14.82	11.42	18.22	14.43	14.70	18.40	9.81	12.70
Mean	12.97	12.18	12.05	11.89	13.53	11.69	12.32	11.42	11.80	12.17	17.93	15.08	16.04	12.96	17.92	13.89	15.84	17.18	11.68	13.34
SD	0.74	1.43	1.32	1.02	1.41	1.01	1.95	0.99	2.04	1.38	1.30	1.39	0.91	1.50	1.39	1.02	2.26	1.72	1.61	1.23
CV	5.74	11.70	10.98	8.60	10.45	8.61	15.86	8.66	17.27	11.37	7.24	9.20	5.67	11.57	7.78	7.38	14.24	9.98	13.81	9.25
CAGR	-0.012	-0.041	-0.003	-0.001	-0.015	-0.014	-0.043	-0.017	-0.035	-0.009	0.019	0.019	-0.006	-0.023	-0.009	-0.003	-0.031	0.010	-0.005	-0.015

Source: RBI and Money Control

The Table-1 shows the capital adequacy ratios of chosen public owned and private owned banks in India. The Bank of Baroda depicts the highest capital adequacy ratio with the mean value of 13.53 followed by state bank of India with a mean value of 12.97. The union bank of India recorded the lowest mean value of 11.69. State bank of India shows the highest consistency with the value of the coefficient of variation 5.74 percent followed by the bank of India with 8.60. Indian overseas bank shows the lowest consistency with the coefficient value of 17.27. All the public sector banks show the negative growth rate in the capital adequacy ratio during the study period.

In private sector banks, the ICICI bank shows the highest capital adequacy ratio with a mean value of 17.93 followed by Kotak Mahindra bank with a mean value of 17.92. Lakshmi vilas bank recorded the lowest mean value of capital adequacy ratio of 11.68. HDFC bank shows the highest consistency in capital adequacy ratio with the coefficient value of 5.67 followed by ICICI bank with the value of 7.24. Federal bank shows the lowest consistency. ICICI bank, Axis bank and Yes bank shows the positive growth in capital adequacy ratio and all the other banks are revealed the negative growth during the study period. Capital adequacy ratio is fluctuating in the all select banks in the post financial crises period.

### *Test for Difference in Capital Adequacy Ratio of Select Public and Private Sector Banks in India*

H<sub>0</sub>: There is no significant difference in Capital Adequacy Ratio of select public and private sector banks in the post financial crises period.

**Table-2: Independent Samples Test of Capital Adequacy Ratio of Select Public and Private Sector Banks**

	F	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference		t	df	Sig. (2-tailed)
				Lower	Upper			
Capital Adequacy Ratio	28.419	2.98360	.28956	3.55461	2.41259	10.304	198	.000*

\*indicates statistical significance at 5 percent level

Table-2 describes that the calculated 't' value is 10.304 whose significant value is 0.000 which is statistically significant at 5 percent level. Hence, the null hypothesis is rejected. It can be concluded that there is a significant difference in capital adequacy ratio of select public and private sector banks in India.

**Table-3:** Return on Assets Ratio of Select Public and Private Sector Banks in India

YEAR	Public Sector Banks										Private Sector Banks									
	SBI	PNB	IDBI	BOI	BOB	UBI	CB	CBI	IOB	UCOB	ICICI	AXB	HDFC	J&K B	KMB	KVB	FB	YB	LVB	SIB
2009	1.04	1.39	0.62	1.49	1.09	1.27	1.06	0.45	1.17	0.59	0.98	1.44	1.28	1.09	1.25	1.49	1.48	1.59	0.71	1.09
2010	0.88	1.44	0.53	0.70	1.21	1.25	1.30	0.66	0.53	0.87	1.13	1.67	1.53	1.20	1.72	1.76	1.15	1.79	0.33	1.07
2011	0.71	1.34	0.73	0.82	1.33	1.05	1.42	0.70	0.71	0.66	1.35	1.68	1.58	1.22	0.72	1.71	1.34	1.58	0.91	1.05
2012	0.88	1.19	0.83	0.72	1.24	0.79	0.95	0.26	0.52	0.69	1.50	1.68	1.77	1.56	1.83	1.56	1.41	1.57	0.73	1.12
2013	0.97	1.00	0.72	0.65	0.90	0.79	0.77	0.44	0.24	0.33	1.70	1.70	1.90	1.70	1.81	1.35	1.35	1.57	0.54	1.17
2014	0.65	0.64	0.41	0.51	0.75	0.52	0.54	-0.47	0.23	0.70	1.78	1.78	2.00	1.74	1.80	0.86	1.20	1.61	0.32	1.00
2015	0.68	0.53	0.29	0.27	0.49	0.49	0.55	0.21	-0.16	0.48	1.86	1.83	2.02	0.70	1.98	0.88	1.32	1.71	0.61	0.56
2016	0.46	-0.61	-1.09	0.94	-0.78	0.35	0.52	-0.48	-0.97	-1.25	1.49	1.72	1.89	0.57	1.19	1.03	0.57	1.78	0.69	0.55
2017	0.41	0.19	-1.37	-0.24	0.20	0.13	0.20	-0.80	-1.21	-0.75	1.35	0.65	1.88	-2.04	1.73	1.00	0.84	1.81	0.83	0.57
2018	-0.18	-1.60	-2.35	-0.99	-0.33	-1.00	-1.56	-0.68	-2.54	-2.05	0.77	0.03	1.64	0.22	1.54	0.51	0.63	0.40	1.35	-1.44
Mean	0.65	0.55	-0.07	0.49	0.61	0.56	0.58	0.03	-0.15	0.03	1.39	1.42	1.75	0.80	1.56	1.22	1.13	1.54	0.70	0.67
SD	0.36	0.99	1.12	0.68	0.72	0.67	0.84	0.58	1.12	1.01	0.35	0.60	0.24	1.11	0.39	0.42	0.33	0.41	0.30	0.78
CV	54.93	179.87	-1640.43	140.37	117.30	118.13	146.17	1983.78	-753.68	3737.75	25.30	41.98	13.54	139.87	24.99	34.38	29.27	26.78	42.46	116.31
CAGR	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	-0.024	-0.321	0.025	-0.148	0.021	-0.102	-0.082	-0.129	0.066	0.000

Source: RBI and Money Control

The Table-3 reveals the Return on Assets Ratio of select public and private sector banks in India. The state bank of India shows the highest Return on Assets Ratio with the mean value of 0.65 followed by Bank of Baroda with a mean value of 0.61. The Indian overseas bank recorded the lowest mean value of -0.15. State bank of India shows the highest consistency with the value of the coefficient of variation 54.93 percent followed by the Bank of Baroda with 117.30. IDBI Bank shows the lowest consistency with the coefficient value of -1640.43. There is no growth rate in Return on Assets of select public sector banks. The return on asset ratio is fluctuating in the select public sector banks during the study period. In private sector banks, the Kotak Mahindra Bank shows the highest Return on Assets ratio with the mean value of 1.56 followed by Yes Bank with the mean value of 1.54. South Indian Bank recorded the lowest mean value of 0.67. HDFC Bank shows the highest consistency in Return on Assets ratio with the coefficient value of 13.54 followed by ICICI Bank with the value of 25.30. Jammu and Kashmir Bank shows the lowest consistency with the value of 139.87. Lakshmi Vilas Bank shows the highest growth rate in return on assets ratio with the value of 0.066 followed by HDFC Bank with the value of 0.025. Axis Bank shows the lowest growth rate in the return on assets ratio during the study period.

### **Test for Difference in Return on Asset Ratio of Select Public and Private Sector Banks in India**

$H_0$ 1: There is no significant difference in Return on Asset Ratio of select public and private sector banks in the post financial crises period.

**Table-4:** Return on Asset Ratio of Select Public and Private Sector Banks

	F	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference		t	df	Sig. (2-tailed)
				Lower	Upper			
Return on Asset	5.534	-.88950	.10732	-1.10113	-.67787	8.289	198	.000*

\*indicates statistical significance at 5 percent level

Table-2 examines that the calculated 't' value is 8.289 whose significant value is 0.000 which is statistically at 5 percent level. Therefore, the null hypothesis is rejected. It can be concluded that there is a significant difference in Return on Asset Ratio of select public and private sector banks in India.

**Table-5:** Return on Equity Ratio of Select Public and Private Sector Banks in India

(in Percentage)

YEAR	Public Sector Banks										Private Sector Banks									
	SBI	PNB	IDBI	BOI	BOB	UBI	CB	CBI	IOB	UCOB	ICICI	AXB	HDFC	J&KB	KMB	KVB	FB	YB	LYB	SIB
2009	17.05	22.92	9.41	24.97	18.62	21.46	18.25	9.25	22.07	16.20	7.80	19.12	17.17	16.72	18.10	18.57	12.13	20.65	11.54	15.80
2010	14.80	24.12	10.53	12.56	21.86	21.65	22.48	15.01	9.63	22.08	7.96	19.15	16.30	18.19	13.29	22.63	10.30	20.27	5.14	16.76
2011	12.62	22.60	13.35	15.79	23.47	17.96	23.20	13.49	12.73	14.36	9.65	19.34	16.74	18.96	9.60	22.26	11.98	21.13	12.40	17.56
2012	15.72	19.80	11.95	14.00	20.64	13.05	15.36	4.57	9.88	13.83	11.20	20.29	18.69	21.22	14.65	20.81	14.37	23.07	11.56	19.99
2013	15.43	15.70	9.29	12.25	15.07	13.52	12.08	7.31	4.47	13.52	13.10	18.53	20.34	23.56	15.60	19.00	13.89	24.81	9.28	19.41
2014	10.03	9.75	5.00	10.14	13.36	9.48	8.95	-8.12	4.06	14.45	14.02	17.43	21.28	22.34	13.82	13.40	12.60	25.02	5.77	15.92
2015	10.62	8.17	3.64	5.57	8.96	9.32	8.79	3.65	-2.86	9.57	14.55	17.75	19.37	8.60	14.12	12.26	13.69	21.33	10.14	8.82
2016	7.30	10.27	-14.08	-19.50	-13.48	6.34	-8.86	-8.07	-18.51	-22.33	11.43	16.81	18.26	6.64	10.97	12.87	6.01	19.94	10.86	8.96
2017	6.31	3.31	-20.32	-5.04	3.44	2.37	3.44	-13.96	-23.23	-14.64	10.33	6.76	17.95	-26.98	13.23	12.61	9.75	18.58	13.13	9.03
2018	-3.37	-29.90	-50.99	-20.15	-5.60	-18.85	-28.38	-14.51	-47.45	-59.36	6.63	0.43	16.45	3.65	18.89	5.51	7.20	6.69	16.40	-27.02
Mean	10.65	10.67	-2.22	5.06	10.63	9.63	7.53	0.86	-2.92	0.77	10.67	15.56	18.26	11.29	14.23	15.99	11.19	20.15	10.62	10.52
SD	6.12	15.95	20.57	15.15	12.39	11.81	15.79	11.10	20.90	25.52	2.71	6.56	1.69	15.13	2.85	5.52	2.84	5.17	3.34	13.87
CV	57.50	149.42	925.38	299.50	116.50	122.64	209.69	128.08	715.62	3322.88	25.41	42.15	9.23	133.97	20.00	34.50	25.41	25.64	31.42	131.79
CAGR	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	-0.02	-0.32	-0.01	-0.14	0.01	-0.11	-0.05	-0.11	0.04	0.00

Source: RBI and Money Control

The Table-5 portrays that the Return on Equity Ratio of select public and private sector banks in India. The Punjab National Bank shows the highest Return on equity ratio with the mean value of 10.67 followed by state Bank of India with a mean value of 10.65. The Indian Overseas Bank recorded the lowest mean value of -2.92. State Bank of India shows the highest consistency with the value of the coefficient of variation 57.50 percent followed by the Bank of Baroda with 116.50. UCO Bank shows the lowest consistency with the coefficient value of 3322.88. There is no growth rate in Return on equity of select public sector banks. The return on equity ratio is fluctuating in the select public sector banks during the study period. In private sector banks, the Yes Bank shows the highest Return on equity ratio with the mean value of 20.15 followed by HDFC Bank with the mean value of 18.26. South Indian bank recorded the lowest mean value of 10.52. HDFC Bank shows the highest consistency in Return on equity ratio with the coefficient value of 9.23 followed by Kotak Mahindra Bank with the value of 20.00. South Indian Bank shows the lowest consistency with the value of 131.79. Lakshmi Vilas Bank shows the highest growth rate in return on equity ratio with the value of 0.04 followed by Kotak Mahindra Bank with the value of 0.01. Axis Bank shows the lowest growth rate in the return on equity ratio during the study period.



## Test for Difference in Return on Equity Ratio of Select Public and Private Sector Banks in India

$H_0$ : There is no significant difference in Return on Equity Ratio of select public and private sector banks in banks in the post financial crises period.

**Table-6:** Return on Equity Ratio of Select Public and Private Sector Banks

	F	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference		t	df	Sig. (2-tailed)
				Lower	Upper			
Return on Equity	29.71	-8.78120	1.83042	-12.39083	-5.17157	4.797	198	.000*

\*indicates statistical significance at 5 percent level

Table-6 indicates that the calculated 't' value is 4.797 whose significant value is 0.000 which is statistically significant at 5 percent level. Hence, the null hypothesis is rejected. It can be concluded that there is a significant difference in Return on Equity Ratio of select public and private sector banks in India.

**Table-7:** Operating Expenses to Net Revenue Ratio of Select Public and Private Sector Banks in India

		Public Sector Banks										Private Sector Banks									
		SBI	PNB	IDBI	BOI	BOB	UBI	CB	CBI	IOB	UCOB	ICICI	AXB	HDFC	J&K B	KMB	KVB	FB	YB	LVB	SIB
YEAR																					
2009		1.97	1.63	1.73	1.24	1.73	1.60	1.91	3.82	1.74	3.10	2.87	1.98	3.25	1.29	4.83	1.11	1.83	1.57	3.05	1.80
2010		2.72	1.48	2.01	3.11	1.54	1.55	1.62	2.37	4.79	1.91	2.54	2.01	2.61	1.42	2.58	1.09	2.35	1.23	9.97	1.73
2011		3.12	1.44	1.37	2.04	1.09	1.90	1.10	3.19	2.40	2.29	1.28	1.41	1.82	1.23	1.90	1.04	1.42	0.93	2.26	1.58
2012		2.23	1.43	1.28	1.85	1.03	2.23	1.42	7.03	3.01	1.85	1.21	1.42	1.66	1.00	1.69	1.08	1.26	0.95	2.74	1.54
2013		2.08	1.72	1.67	1.94	1.33	2.09	1.79	4.17	6.01	3.52	1.08	1.33	1.67	0.94	1.62	1.39	1.41	1.03	3.68	1.53
2014		3.28	2.79	2.96	2.45	1.57	3.23	2.49	4.10	6.23	1.61	1.05	1.27	1.42	0.99	1.69	2.35	1.72	1.08	6.62	1.74
2015		2.95	3.43	4.61	4.73	2.26	3.45	2.69	9.20	-9.24	2.33	1.03	1.25	1.37	2.77	1.74	2.38	1.62	1.14	3.28	3.19
2016		4.20	-2.51	-1.13	-1.53	-1.65	4.66	-2.66	-5.69	-1.73	-1.01	1.30	1.23	1.38	3.72	2.62	2.21	3.92	1.17	3.01	3.44
2017		4.43	7.08	-1.00	-5.69	6.72	116.61	7.59	-2.61	-1.44	-1.62	1.51	3.32	1.35	-1.05	1.65	2.12	2.66	12.47	2.54	3.00
2018		-9.16	-1.10	-0.58	-1.51	-4.18	-1.29	-2.26	-1.25	-8.87	-0.66	2.32	50.75	1.30	9.79	1.57	4.11	2.79	1.23	-1.34	3.95
Mean		1.78	1.74	1.29	0.86	1.14	13.60	1.57	2.43	0.29	1.33	1.62	6.60	1.78	2.21	2.19	1.89	2.10	2.28	3.58	2.35
SD		3.93	2.56	1.80	2.99	2.77	36.23	2.82	4.48	5.62	1.79	0.69	15.53	0.65	2.94	1.00	0.97	0.83	3.58	2.95	0.94
CV		220.59	147.13	139.48	346.59	242.76	266.31	179.45	183.89	1942.99	133.99	42.43	235.36	36.17	132.92	45.87	51.24	39.75	157.17	82.42	39.82
CAGR		0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	-0.021	0.383	-0.088	0.225	-0.106	0.139	0.043	-0.024	0.000	0.082

Source: Compiles and computed from Reserve Bank of India and Money Control website

The Table-7 deals with the Operating Expenses to Net Revenue Ratio of select public and private sector banks in India. The Union Bank of India shows the highest Operating Expenses to Net Revenue ratio with the mean value of 13.60 followed by Central Bank of India with a mean value of 2.43. The Indian Overseas Bank recorded the lowest mean value of 0.29. UCO Bank shows the highest consistency with the value of the coefficient of variation 133.90 percent. UCO Bank shows the lowest stability. There is no growth rate in Operating Expenses to Net Revenue of select public sector banks. The Operating Expenses to Net Revenue ratio is fluctuating in the select public sector banks during the study period. In private sector banks, the Axis Bank shows the highest Operating Expenses to Net Revenue ratio with the mean value of 6.60 followed by Lakshmi Vilas Bank with the mean value of 3.58. ICICI Bank recorded the lowest mean value of 1.62. Federal Bank shows the highest consistency and Axis Bank shows the lowest consistency in

Operating Expenses to Net Revenue ratio. Axis bank shows the lowest consistency in Operating Expenses to Net Revenue ratio. The bank also depicts the highest growth rate. Kotak Mahindra Bank shows the lowest growth rate in the Operating Expenses to Net Revenue ratio during the study period.

### *Test for Difference in Operating Expenses to Net Revenue Ratio of Select Public and Private Sector Banks in India*

H<sub>0</sub>1: There is no significant difference in Operating Expenses to Net Revenue Ratio of select public and private sector banks in the post financial crises period.

**Table-8:** Operating Expenses to Net Revenue Ratio of Select Public and Private Sector Banks

	F	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference		t	df	Sig. (2-tailed)
				Lower	Upper			
Return on Equity	1.645	-.05480	1.30287	1.30287	-2.63144	-.042	198	.967

It is observed from the Table-8 that the calculated 't' value is .042 whose significant value is .967 which is not statistically significant at 5 percent level. So, the null hypothesis is accepted. It can be concluded that there is no significant difference in Operating Expenses to Net Revenue Ratio of select public and private sector banks in India.

**Table-9:** Net Interest Margin Ratio of Select Public and Private Sector Banks in India

(In Percentage)

	Public Sector Banks										Private Sector Banks									
YEAR	SBI	PNB	IDBI	BOI	BOB	UBI	CB	CBI	IOB	UCOB	ICICI	AXB	HDFC	J&K B	KMB	KVB	FB	YB	LVB	SIB
2009	3.26	3.82	1.50	3.25	2.99	2.76	2.08	2.76	3.38	1.99	4.25	4.16	5.61	3.15	5.64	3.77	3.87	3.86	2.72	2.87
2010	3.41	3.12	1.82	2.71	2.72	2.62	2.13	2.78	3.07	2.05	3.81	4.58	5.19	3.35	5.87	3.53	3.72	3.47	3.62	2.64
2011	2.65	2.92	1.68	2.22	2.45	2.63	2.53	2.29	2.35	2.35	2.21	2.70	3.80	3.05	4.12	2.71	3.39	2.11	2.74	2.41
2012	3.24	3.10	1.56	2.16	2.30	2.59	2.24	2.05	2.28	2.16	2.26	2.80	3.63	3.05	3.82	2.43	3.22	2.19	2.28	2.53
2013	2.83	2.93	1.66	1.99	2.06	2.41	2.13	1.91	2.14	2.30	2.58	2.83	3.94	3.22	3.83	2.47	2.77	2.23	2.21	2.57
2014	2.74	2.74	1.83	1.88	1.81	2.22	2.24	1.81	2.02	2.53	2.77	3.11	3.75	3.41	4.24	2.49	2.98	2.49	2.35	2.54
2015	2.68	2.29	1.61	1.83	1.84	2.21	2.32	1.76	1.88	2.26	2.94	3.07	3.79	3.48	3.98	2.75	2.87	2.56	2.13	2.31
2016	2.51	2.08	1.62	1.92	1.89	2.05	2.31	1.76	1.96	1.97	2.94	3.20	3.89	3.37	3.58	3.08	2.73	2.76	2.24	2.38
2017	2.28	1.94	1.58	1.88	1.94	1.96	1.97	1.69	2.09	1.64	2.81	3.00	3.83	3.06	3.78	3.35	2.65	2.69	2.22	2.25
2018	2.16	1.94	1.61	1.72	2.15	1.90	1.99	1.97	2.20	1.44	2.61	2.69	3.76	3.20	3.59	3.43	2.59	2.47	1.95	2.37
Mean	2.78	2.69	1.65	2.16	2.22	2.34	2.19	2.08	2.34	2.07	2.92	3.21	4.12	3.23	4.25	3.00	3.08	2.68	2.45	2.49
SD	0.42	0.61	0.11	0.48	0.40	0.31	0.17	0.40	0.49	0.33	0.65	0.64	0.69	0.16	0.82	0.49	0.45	0.57	0.48	0.18
CV	15.08	22.87	6.46	22.08	18.01	13.23	7.74	19.44	21.15	16.00	22.11	19.94	16.69	4.94	19.41	16.48	14.71	21.10	19.61	7.34
CAGR	-0.040	-0.066	0.007	-0.062	-0.032	-0.037	-0.004	-0.033	-0.042	-0.032	-0.048	-0.043	-0.039	0.002	-0.044	-0.009	-0.039	-0.044	-0.033	-0.019

Source: RBI and Money Control

The Table-9 shows the Net Interest Margin Ratio of select public and private sector banks in India. The State Bank of India shows the highest Return on Assets Ratio with a mean value of 0.65 followed by Bank of Baroda with a mean value of 0.61. The Indian Overseas Bank recorded the lowest mean value of -0.15. State bank of India shows the highest consistency with the value of the coefficient of variation 54.93 percent followed by the Bank of Baroda with 117.30. IDBI bank shows the lowest consistency with the coefficient value of -1640.43. There is no growth rate in Return on Assets of select public sector banks. The return on asset ratio is fluctuating in the select public sector banks during the study period. In private sector banks, the Kotak Mahindra Bank shows the highest Return on Assets

ratio with the mean value of 1.56 followed by Yes Bank with the mean value of 1.54. South Indian Bank recorded the lowest mean value of 0.67. HDFC Bank shows the highest consistency in Return on Assets ratio with the coefficient value of 13.54 followed by ICICI Bank with the value of 25.30. Jammu and Kashmir Bank shows the lowest consistency with the value of 139.87. Lakshmi Vilas Bank shows the highest growth rate in return on assets ratio with the value of 0.066 followed by HDFC Bank with the value of 0.025. Axis Bank shows the lowest growth rate in the return on assets ratio during the study period.

### **Test for Difference in Net Interest Margin Ratio of Select Public and Private Sector Banks in India**

H<sub>0</sub>1: There is no significant difference in Net Interest Margin Ratio of select public and private sector banks in the post financial crises period.

**Table-10:** Net Interest Margin Ratio of Select Public and Private Sector Banks

	F	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference		t	df	Sig. (2-tailed)
				Lower	Upper			
Net Interest Margin	17.07	-.89310	.09251	-1.0755	-.71068	-9.654	198	.000*

\*indicates statistical significance at 5 percent level

Table-10 indicates that the calculated 't' value is 9.654 whose significant value is 0.000 which is statistically at 5 percent level. Hence, the null hypothesis is rejected. It can be concluded that there is a significant difference in Return on Equity Ratio of select public and private sector banks in India.

**Table-11:** Total Liquid Assets to Total Assets Ratio of Select Public and Private Sector Banks in India

(in Ratio)

YEAR	Public Sector Banks										Private Sector Banks									
	SBI	PNB	IDBI	BOI	BOB	UBI	CB	CBI	IOB	UCOB	ICICI	AXB	HDFC	J&K B	KMB	KVB	FB	YB	LVB	SIB
2009	0.11	0.09	0.07	0.10	0.11	0.10	0.08	0.08	0.09	0.06	0.08	0.10	0.10	0.14	0.04	0.08	0.09	0.08	0.11	0.10
2010	0.09	0.08	0.06	0.11	0.13	0.08	0.07	0.11	0.08	0.09	0.11	0.08	0.13	0.11	0.06	0.06	0.06	0.07	0.08	0.08
2011	0.10	0.08	0.08	0.11	0.14	0.09	0.09	0.07	0.07	0.08	0.08	0.09	0.11	0.07	0.05	0.06	0.07	0.06	0.08	0.08
2012	0.07	0.06	0.06	0.09	0.14	0.06	0.08	0.06	0.15	0.08	0.08	0.05	0.06	0.07	0.04	0.05	0.06	0.05	0.05	0.07
2013	0.07	0.06	0.06	0.12	0.16	0.05	0.08	0.05	0.12	0.07	0.08	0.06	0.07	0.08	0.04	0.04	0.05	0.04	0.05	0.09
2014	0.07	0.08	0.05	0.11	0.20	0.07	0.09	0.04	0.07	0.06	0.07	0.07	0.08	0.05	0.07	0.05	0.06	0.05	0.06	0.06
2015	0.09	0.09	0.04	0.12	0.21	0.06	0.09	0.05	0.09	0.09	0.07	0.08	0.06	0.05	0.06	0.05	0.06	0.06	0.05	0.06
2016	0.07	0.11	0.04	0.16	0.20	0.07	0.10	0.05	0.08	0.08	0.08	0.06	0.05	0.04	0.06	0.05	0.06	0.05	0.05	0.05
2017	0.06	0.12	0.09	0.15	0.22	0.07	0.10	0.24	0.09	0.08	0.10	0.08	0.06	0.07	0.11	0.07	0.06	0.09	0.05	0.05
2018	0.06	0.13	0.10	0.16	0.13	0.10	0.08	0.12	0.11	0.07	0.10	0.06	0.12	0.09	0.07	0.06	0.07	0.08	0.05	0.05
Mean	0.08	0.09	0.07	0.12	0.16	0.08	0.09	0.09	0.09	0.08	0.08	0.07	0.08	0.08	0.06	0.06	0.06	0.06	0.06	0.07
SD	0.02	0.02	0.02	0.03	0.04	0.02	0.01	0.06	0.03	0.01	0.01	0.02	0.03	0.03	0.02	0.01	0.01	0.02	0.02	0.02
CV	20.27	25.96	29.33	20.87	24.38	22.73	11.88	66.29	27.62	13.05	15.63	21.21	33.49	38.99	33.08	20.70	15.78	26.73	30.97	24.89
CAGR	-0.064	0.037	0.040	0.049	0.020	0.001	0.007	0.036	0.016	0.008	0.019	-0.047	0.019	-0.040	0.064	-0.022	-0.028	-0.006	-0.072	-0.065

Source: Compiles and computed from Reserve Bank of India and Money Control website

The Table-11 describes the Total Liquid Assets to Total Assets Ratio of select public and private sector banks in India. The Bank of Baroda shows the highest Total Liquid Assets to Total Assets with the mean value of 0.16 followed by Bank

of India with a mean value of 0.12. The IDBI Bank recorded the lowest mean value of 0.07. Canara Bank shows the highest consistency with the value of the coefficient of variation 11.88 percent followed by UCO Bank with 13.05. IDBI Bank shows the lowest consistency with the coefficient value of 29.33. Bank of India shows the highest growth rate in Total Liquid Assets to Total Assets ratio with the value of 0.049 followed by IDBI Bank with the value of 0.040. ICICI Bank shows the lowest growth rate in the Total Liquid Assets to Total Assets ratio during the study period. In private sector banks, the ICICI Bank, HDFC Bank and Jammu and Kashmir Bank show the highest Total Liquid Assets to Total Assets ratio with the mean value of 0.08 followed by Axis Bank and south Indian Bank with the mean value of 0.07. Other banks recorded the lowest mean value of 0.06. ICICI Bank shows the highest consistency in Total Liquid Assets to Total Assets ratio with the coefficient value of 15.63 percent followed by Federal Bank with the value of 15.78 percent. Jammu and Kashmir Bank shows the lowest consistency with the value of 38.99 percent. Kotak Mahindra Bank shows the highest growth rate in Total Liquid Assets to Total Assets ratio and Lakshmi Vilas Bank shows the lowest growth rate in the during the study period.

### ***Test for Difference in Total Liquid Assets to Total Assets Ratio of Select Public and Private Sector Banks in India***

$H_0$ : There is no significant difference in Total Liquid Assets to Total Assets Ratio of select public and private sector banks in the post financial crises period.

**Table-12:** Total Liquid Assets to Total Assets Ratio of Select Public and Private Sector Banks

	F	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference		t	df	Sig. (2-tailed)
				Lower	Upper			
T LA to TA	15.611	.02450	.00442	.01578	0.3322	5.539	198	.000*

\*indicates statistical significance at 5 percent level

Table-12 exhibits that the calculated ‘t’ value is 5.539 whose significant value is 0.000 which is statistically significant at 5 percent level. Therefore, the null hypothesis is rejected. It can be concluded that there is a significant difference in Total Liquid Assets to Total Assets Ratio of select public and private sector banks in India.

**Table-13:** Total Liquid Assets to Total Deposits Ratio of Select Public and Private Sector Banks in India

(in Ratio)

YEAR	Public Sector Banks										Private Sector Banks									
	SBI	PNB	IDBI	BOI	BOB	UBI	CB	CBI	IOB	UCOB	ICICI	AXB	DHFC	J&K B	KMB	KVB	FB	YB	LVB	SIB
2009	0.14	0.10	0.10	0.11	0.13	0.12	0.09	0.09	0.11	0.08	0.14	0.13	0.12	0.16	0.07	0.09	0.11	0.12	0.12	0.11
2010	0.12	0.09	0.09	0.14	0.15	0.09	0.08	0.12	0.09	0.10	0.19	0.11	0.18	0.12	0.10	0.06	0.08	0.10	0.09	0.09
2011	0.13	0.09	0.12	0.12	0.16	0.10	0.10	0.09	0.08	0.09	0.15	0.11	0.14	0.08	0.08	0.07	0.09	0.08	0.09	0.08
2012	0.09	0.08	0.09	0.11	0.17	0.07	0.09	0.07	0.09	0.09	0.14	0.06	0.08	0.08	0.07	0.05	0.06	0.07	0.06	0.07
2013	0.10	0.07	0.08	0.14	0.18	0.06	0.10	0.06	0.08	0.08	0.14	0.08	0.09	0.08	0.07	0.05	0.06	0.06	0.06	0.10
2014	0.10	0.10	0.07	0.13	0.23	0.08	0.11	0.05	0.08	0.08	0.13	0.10	0.11	0.06	0.10	0.06	0.08	0.08	0.07	0.07
2015	0.11	0.11	0.06	0.14	0.24	0.07	0.10	0.06	0.10	0.10	0.12	0.11	0.08	0.06	0.08	0.06	0.07	0.08	0.06	0.07

YEAR	Public Sector Banks										Private Sector Banks									
	SBI	PNB	IDBI	BOI	BOB	UBI	CB	CBI	IOB	UCOB	ICICI	AXB	DFHC	J&K B	KMB	KVB	FB	YB	LYB	SIB
2016	0.10	0.13	0.06	0.19	0.23	0.09	0.12	0.06	0.10	0.09	0.14	0.09	0.07	0.05	0.08	0.06	0.07	0.07	0.05	0.06
2017	0.08	0.14	0.12	0.18	0.25	0.09	0.12	0.27	0.11	0.09	0.15	0.12	0.08	0.07	0.14	0.08	0.08	0.14	0.05	0.06
2018	0.07	0.15	0.14	0.18	0.16	0.12	0.10	0.13	0.12	0.08	0.15	0.10	0.16	0.10	0.10	0.08	0.08	0.12	0.06	0.06
Mean	0.10	0.11	0.09	0.15	0.19	0.09	0.10	0.10	0.10	0.09	0.15	0.10	0.11	0.09	0.09	0.07	0.08	0.09	0.07	0.08
SD	0.02	0.03	0.03	0.03	0.04	0.02	0.01	0.06	0.01	0.01	0.02	0.02	0.04	0.03	0.02	0.01	0.01	0.03	0.02	0.02
CV	20.84	24.95	28.81	20.33	23.66	22.14	12.26	64.37	15.21	11.44	13.90	19.03	33.52	39.05	24.58	19.21	15.81	27.80	30.97	24.40
CAGR	-0.066	0.038	0.031	0.048	0.023	0.005	0.007	0.036	0.012	0.008	0.009	-0.029	0.024	-0.043	0.034	-0.018	-0.026	0.004	-0.066	-0.063

Source: Compiles and computed from Reserve Bank of India and Money Control website

The Table-13 deals with the Total Liquid Assets to Total Deposits Ratio of select public and private sector banks in India. The Bank of Baroda shows the highest Total Liquid Assets to Total Deposits with the mean value of 0.19 followed by bank of India with a mean value of 0.15. The IDBI Bank, Union Bank of India and UCO bank recorded the lowest mean value of 0.09. The UCO Bank shows the highest consistency with the value of the coefficient of variation 11.44 percent followed by Canara Bank with 12.26. Central bank of India shows the lowest consistency with the coefficient value of 67.37. Bank of India shows the highest growth rate in Total Liquid Assets to Total Deposits ratio with the value of 0.048 followed by Punjab national bank with the value of 0.038. State bank of India shows the lowest growth rate in the Total Liquid Assets to Total Deposits ratio during the study period. In private sector banks, the ICICI bank, HDFC Bank and Jammu and Kashmir Bank show the highest Total Liquid Assets to Total Deposits ratio with the mean value of 0.15 followed by HDFC bank with the mean value of 0.11. Karur Vysya Bank and Lakshmi Vilas Bank are recorded the lowest mean value of 0.07. ICICI Bank shows the highest consistency in Total Liquid Assets to Total Deposits ratio with the coefficient value of 13.90 percent followed by federal bank with the value of 15.91 percent. Jammu and Kashmir Bank shows the lowest consistency with the value of 35.05 percent. Kotak Mahindra Bank shows the highest growth rate in Total Liquid Assets to Total Deposits ratio and Lakshmi Vilas Bank shows the lowest growth rate during the study period.

#### *Test for Difference in Total Liquid Assets to Total Deposits Ratio of Select Public and Private Sector Banks in India*

H<sub>0</sub>1: There is no significant difference in Total Liquid Assets to Total Deposits Ratio of select public and private sector banks in the post financial crises period.

**Table-14:** Total Liquid Assets to Total Deposits Ratio of Select Public and Private Sector Banks

F	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference		t	df	Sig. (2-tailed)
			Lower	Upper			
T LA to TA	2.252	.01930	.00884	.02976	3.642	198	.000*

\*indicates statistical significance at 5 percent level

Table-14 examines that the calculated 't' value is 5.539 whose significant value is 0.000 which is statistically significant at 5 percent level. Therefore, the null hypothesis is rejected. It can be concluded that there is a significant difference in Total Liquid Assets to Total Assets Ratio of select public and private sector banks in India.

**Table-15: Loans to Deposit Ratio of Select Public and Private Sector Banks in India**

(in Ratio)

YEAR	Public Sector Banks										Private Sector Banks									
	SBI	PNB	IDBI	BOI	BOB	UBI	CB	CBI	IOB	UCOB	ICICI	AXB	HDFC	J&K B	KMB	KVB	FB	YB	LVB	SIB
2009	0.73	0.74	0.92	0.75	0.75	0.70	0.74	0.65	0.75	0.34	1.00	0.69	0.69	0.63	1.06	0.69	0.70	0.77	0.71	0.66
2010	0.79	0.75	0.82	0.73	0.73	0.70	0.72	0.65	0.71	0.38	0.90	0.74	0.75	0.62	0.87	0.70	0.75	0.83	0.69	0.69
2011	0.81	0.77	0.87	0.71	0.75	0.75	0.72	0.72	0.77	0.48	0.96	0.75	0.77	0.59	1.00	0.72	0.74	0.75	0.73	0.69
2012	0.83	0.77	0.86	0.78	0.75	0.80	0.71	0.75	0.79	0.57	0.99	0.77	0.79	0.62	1.01	0.75	0.77	0.77	0.72	0.75
2013	0.87	0.79	0.86	0.76	0.69	0.79	0.68	0.76	0.79	0.71	0.99	0.78	0.81	0.61	0.95	0.76	0.77	0.70	0.75	0.72
2014	0.87	0.77	0.84	0.78	0.70	0.77	0.72	0.74	0.77	0.75	1.02	0.82	0.82	0.67	0.90	0.78	0.73	0.75	0.69	0.76
2015	0.82	0.76	0.80	0.76	0.69	0.81	0.70	0.72	0.77	0.69	1.07	0.87	0.81	0.68	0.88	0.58	0.72	0.83	0.74	0.72
2016	0.85	0.75	0.81	0.70	0.67	0.78	0.68	0.68	0.72	0.61	1.03	0.95	0.85	0.72	0.86	0.78	0.73	0.88	0.77	0.74
2017	0.77	0.67	0.71	0.68	0.64	0.76	0.69	0.47	0.66	0.59	0.95	0.90	0.86	0.69	0.86	0.76	0.75	0.93	0.78	0.70
2018	0.71	0.68	0.69	0.66	0.72	0.71	0.73	0.53	0.61	0.59	0.91	0.97	0.83	0.71	0.88	0.79	0.82	1.01	0.77	0.76
Mean	0.80	0.75	0.82	0.73	0.71	0.76	0.71	0.67	0.73	0.57	0.98	0.82	0.80	0.65	0.93	0.73	0.75	0.82	0.74	0.72
SD	0.05	0.04	0.07	0.04	0.04	0.04	0.02	0.10	0.06	0.13	0.05	0.09	0.05	0.05	0.07	0.06	0.03	0.10	0.03	0.03
CV	6.69	5.37	8.62	5.83	5.26	5.46	2.95	14.71	8.06	23.40	5.50	11.30	6.38	7.07	7.97	8.44	4.50	11.58	4.35	4.82
CAGR	-0.002	-0.009	-0.028	-0.014	-0.003	0.002	-0.002	-0.020	-0.020	0.055	-0.009	0.034	0.019	0.012	-0.019	0.013	0.017	0.028	0.008	0.015

Source: Compiles and computed from Reserve Bank of India and Money Control website

The Table-15 shows the Loans to Deposit Ratio of select public and private sector banks in India. The IDBI Bank reveals the highest Loans to Deposits ratio with the mean value of 0.82 followed by ICICI Bank with a mean value of 0.80. The UCO bank recorded the lowest mean value of 0.57. Canara Bank examines the highest consistency with the value of the coefficient of variation of 2.95 percent followed by Bank of Baroda with 5.26. UCO Bank indicates the lowest consistency with the coefficient value of 23.40. UCO Bank shows the highest growth rate in Loans to Deposit ratio with the value of 0.055 followed by union bank of India with the value of 0.002. IDBI Bank shows the lowest growth rate in the Loans to Deposit ratio during the study period. In private sector banks, the ICICI bank describes the highest Loans to Deposit ratio with the mean value of 0.98 followed by Kotak Mahindra Bank with the mean value of 0.93. Jammu and Kashmir Bank recorded the lowest mean value of 0.65. Federal bank shows the highest consistency in Loans to Deposit ratio with the coefficient value of 4.50 percent followed by south Indian bank with the value of 4.82 percent. Yes bank reveals the lowest consistency with the value of 11.58 percent. Axis Bank shows the highest growth rate in Loans to Deposit ratio and ICICI Bank shows the lowest growth rate in the during the study period.

### *Test for Difference in Loans to Deposit Ratio of Select Public and Private Sector Banks in India*

H<sub>0</sub>1: There is no significant difference in Loans to Deposit Ratio of select public and private sector banks in the post financial crises period.

**Table-16: Loans to Deposit Ratio of Select Public and Private Sector Banks**

F	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference		t	df	Sig. (2-tailed)
			Lower	Upper			
Loans to Deposit Ratio	2.252	.01930	.00884	.02976	3.642	198	.000*

\*indicates statistical significance at 5 percent level

Table-16 indicates that the calculated 't' value is 3.642 whose significant value is 0.000 which is statistically at 5 percent level. Therefore, the null hypothesis

is rejected. It can be concluded that there is a significant difference in Loans to Deposit Ratio of select public and private sector banks in India.

**Table-17:** Inter Bank Deposits to Total Deposits Ratio of Select Public and Private Sector Banks in India

(in Ratio)

	Public Sector Banks										Private Sector Banks									
YEAR	SBI	PNB	IDBI	BOI	BOB	UBI	CB	CBI	IOB	UCOB	ICICI	AXB	HDFC	J&K B	KMB	KVB	FB	YB	LVB	SIB
2009	0.07	0.02	0.02	0.07	0.07	0.05	0.04	0.01	0.05	0.02	0.06	0.05	0.03	0.09	0.01	0.03	0.04	0.04	0.04	0.06
2010	0.04	0.02	0.00	0.07	0.09	0.02	0.02	0.01	0.02	0.01	0.06	0.04	0.09	0.05	0.01	0.00	0.01	0.03	0.01	0.03
2011	0.03	0.02	0.01	0.05	0.10	0.01	0.03	0.01	0.01	0.03	0.06	0.04	0.02	0.01	0.01	0.00	0.02	0.01	0.01	0.02
2012	0.04	0.03	0.01	0.06	0.11	0.02	0.03	0.01	0.03	0.03	0.06	0.01	0.02	0.03	0.02	0.00	0.02	0.03	0.01	0.03
2013	0.04	0.02	0.03	0.09	0.15	0.02	0.05	0.01	0.03	0.04	0.08	0.02	0.04	0.04	0.03	0.00	0.02	0.01	0.01	0.06
2014	0.03	0.05	0.02	0.09	0.20	0.02	0.05	0.01	0.03	0.03	0.06	0.04	0.04	0.02	0.05	0.00	0.02	0.02	0.01	0.02
2015	0.04	0.06	0.01	0.09	0.20	0.02	0.05	0.01	0.05	0.06	0.05	0.05	0.02	0.02	0.03	0.00	0.02	0.03	0.01	0.02
2016	0.02	0.09	0.01	0.13	0.20	0.04	0.04	0.01	0.04	0.05	0.08	0.03	0.02	0.00	0.03	0.01	0.02	0.02	0.01	0.01
2017	0.02	0.10	0.07	0.13	0.21	0.04	0.04	0.01	0.06	0.05	0.09	0.05	0.02	0.02	0.10	0.03	0.03	0.09	0.01	0.01
2018	0.02	0.10	0.08	0.12	0.12	0.07	0.05	0.01	0.07	0.04	0.09	0.02	0.02	0.05	0.06	0.02	0.04	0.07	0.01	0.01
Mean	0.04	0.05	0.03	0.09	0.14	0.03	0.04	0.01	0.04	0.04	0.07	0.04	0.03	0.03	0.03	0.01	0.02	0.03	0.01	0.03
SD	0.01	0.03	0.03	0.03	0.05	0.02	0.01	0.00	0.02	0.02	0.02	0.01	0.02	0.03	0.03	0.01	0.01	0.03	0.01	0.02
CV	40.86	67.28	104.29	31.43	37.00	59.87	30.02	29.89	44.37	42.50	22.76	37.01	66.34	74.81	80.47	110.50	35.60	76.63	86.47	63.54
CAGR	-0.136	0.175	0.133	0.062	0.054	0.033	0.041	0.017	0.033	0.055	0.048	-0.095	-0.018	-0.059	0.196	-0.014	-0.004	0.052	-0.132	-0.136

Source: Compiles and computed from Reserve Bank of India and Money Control website

The Table-17 presents that the Inter Bank Deposits to Total Deposits of select public and private sector banks in India. The bank of Baroda shows the highest Inter Bank Deposits to Total Deposits with the mean value of 0.14 followed by bank of India with a mean value of 0.09. The central bank of India recorded the lowest mean value of 0.01. Central bank of India shows the highest consistency with the value of the coefficient of variation 29.89 percent followed by canara bank with 30.02. IDBI bank reveals the lowest consistency with the coefficient value of 104.32. Punjab national bank exhibits the highest growth rate in Inter Bank Deposits to Total Deposits ratio with the value of 0.175 followed by IDBI bank with the value of 0.133. State bank of India shows the lowest growth rate in the Inter Bank Deposits to Total Deposits ratio during the study period. In private sector banks, the ICICI bank shows the highest Inter Bank Deposits to Total Deposits ratio with the mean value of 0.07 followed by Axis bank with the mean value of 0.04. Karur Vysya Bank and Lakshmi Vilas Bank have recorded the lowest mean value of 0.01. ICICI bank shows the highest consistency in Inter Bank Deposits to Total Deposits ratio with the coefficient value of 22.76 percent followed federal bank with the value of 35.60 percent. Karur Vysya bank describes the lowest consistency with the value of 110.50 percent. Kotak Mahindra bank shows the highest growth rate in Inter Bank Deposits to Total Deposits ratio and South Indian Bank shows the lowest growth rate during the study period.

### *Test for Difference in Inter Bank Deposits to Total Deposits Ratio of Select Public and Private Sector Banks in India*

$H_0$ : There is no significant difference in Inter Bank Deposits to Total Deposits Ratio of select public and private sector banks in the post financial crises period.

**Table-18:** Inter Bank Deposits to Total Deposits Ratio of Select Public and Private Sector Banks

	F	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference		t	df	Sig. (2-tailed)
				Lower	Upper			
IBD to TD	15.589	01880	.00513	.00869	.02891	3.668	198	.000*

\*indicates statistical significance at 5 percent level

Table-18 reveals that the calculated 't' value is 3.668 whose significant value is 0.000 which is statistically at 5 percent level. Hence, the null hypothesis is rejected. It can be concluded that there is a significant difference in Inter Bank Deposits to Total Deposits Ratio of select public and private sector banks in India.

## Conclusion

Banks are primary intermediaries in mobilizing resources and channelling resources to various sectors. The present study indicates that during the study period all the select banks have maintained the capital adequacy ratio as per Basel norms. In the public sector banks, there is no growth in capital adequacy, profitability and liquidity point in the post financial crisis period. At the same time the private sector banks have the tiny growth in capital adequacy, profitability and liquidity position. The present study find the there is a statistically significant difference between capital adequacy, profitability and liquidity position of public and private sector banks in the financial crisis period. During the study period the operating expenses to net revenue ratio revealed the not significant. The present study suggests that the public sector banks should pay more attention to pick up their profitability and take the necessary steps to reduce their operating expenses.

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# Access to Basic Urban Services and Human Development: An Analysis of the Indian States

Ramakrishna Nallathiga<sup>1</sup>

## Abstract

Basic urban services refer to the vital civic services viz., water supply, sanitation, electricity, waste management and housing, required for the citizens of urban areas in India and for the functioning of cities. The provision of these services can also have an impact on the human capital measured in terms of educational attainment, healthy living status and economic well being. However, the provision of basic urban services by the Urban Local Governments (ULGs) is not uniform across the country for a variety of reasons ranging from the political, social and economic conditions to the fiscal status as well as inter-government relations. This paper is an attempt to find the correspondence between urban services and human development at the State level in India. It describes the status of urban services in terms of the service access / coverage in Indian States using secondary data and then develops an index of these services – BUSI. Human capital measure in the form of Human Development Index (HDI) of the States is obtained from secondary source / literature. Later, it analyses the correlation between the BUSI and the HDI so as to understand the association between them at the State level. The cob-web diagrams of basic urban services status in respective States also give a good indication of service access / coverage status in a synthesized manner.

**Keywords:** Basic Urban Services, BUSI, HDI, Human Development

## Introduction

Basic urban services refer to the vital civic services required for the citizens of urban areas and for the functioning of cities viz., water supply, sanitation, waste management, drainage, roads, power and shelter etc. In India, most of these basic services are normally provided by urban local bodies / urban local governments (sometimes called as municipal bodies / governments)<sup>2</sup>. It is the constitution of municipal body that defines the range of urban / civic services to be provided. The provision of these basic urban services can be an important determinant of the quality of living enjoyed by the citizens and therefore their welfare. However, the provision of basic urban services is not uniform across in a country like India,

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<sup>2</sup> There is a large variation in the institutional arrangement for the provision of these civic services, which varies from State to State and also within a State. A detailed description of the same can be found in Gol (2011)

which is governed by the States (or, provinces) formed according to Constitution<sup>3</sup>. There are several factors that influence the performance of the States e.g., finances, governance, efficiency, targeting and capacity. An important spin off from basic urban infrastructure/services is an improvement in the quality of living or welfare of the citizens, which enables them to perform other functions such as education, employment and healthcare, together termed as indicators of Human Development. The UNDP had initially come out with this concept and it began to develop the measure of Human Development Index (HDI) for the countries in 1995, which is now extended to sub-national level for the States in India<sup>4</sup>.

It is well laid down that infrastructure is vital for the development of any nation/state and also that good infrastructure supports / boosts economic growth of respective country/ state (Ahluwalia 2007). Basic urban services form an essential part of the infrastructure provided on urban space and therefore support the economic growth and development. As India is increasingly becoming rapidly urbanized in the last couple of decades and is expected reach 40% level by 2030 AD (MGI 2010), the provision of urban basic services assumes a lot of importance in determining the economic growth and development of cities. Urban infrastructure or urban basic services has several dimensions – (i) service provision (ii) service financing (iii) service distribution/ spread (iv) service usage/consumption (v) service access and (vi) current status of services. Several studies in the past have examined the aspects of current status at aggregate level e.g., Bhagat (2011), financing e.g., Sridhar and Reddy (2010) and the issues in service provision e.g., Kundu et al (1999). It is therefore proposed in this paper to study the access position of basic urban services in the States so as to understand their service delivery performance of the States in a federal system of governance like that of India.

In the current study, the ‘Access Status’ of basic urban services in the Indian States is studied in line with some of the earlier studies e.g., Shaw (2007) and Haque (2016). For the purpose of the study, the following five major urban services are chosen – water supply, sanitation, waste management, electricity and housing. We use the published/secondary data from the latest survey (69<sup>th</sup> Round) of the National Sample Survey Organisation (NSSO). The NSSO survey carried out in 2012 gives an account of the major urban services in Indian States. Apart from the NSSO data, we also use the data on the HDI of the States obtained from multiple secondary sources i.e., Suryanaraya et al (2011) and Mukherjee and Chakraborty (2011). Some attempts were made to compute HDI separately for urban areas e.g., Mukherjee and Chakraborty (2011), which also we use in our current study.

## **Access Status of Basic Urban Services in India**

In this section, we review the access status of the five major urban services among Indian States in terms of improved service coverage and describe the emergent patterns of the same.

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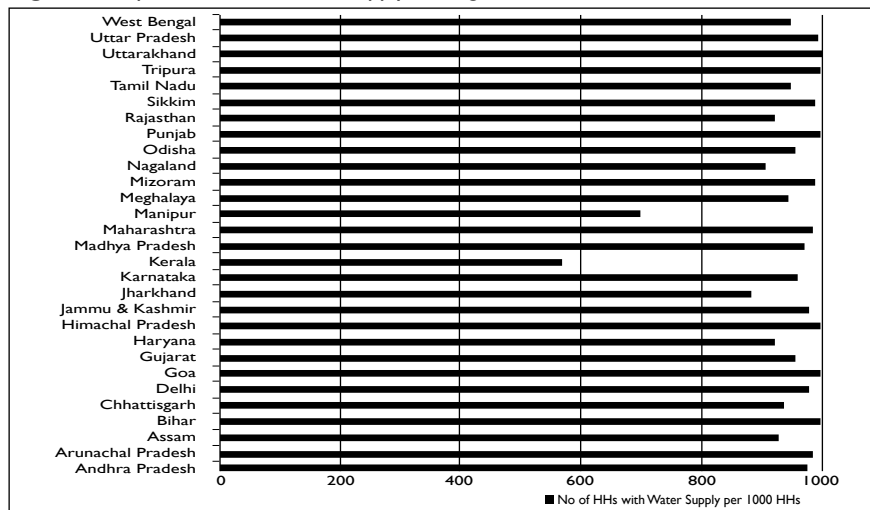
3 Although the 74<sup>th</sup> Constitutional Amendment Act 1992 has provided some functional and financial autonomy to the ULGs, it still kept status quo of them as a part and parcel of State governments.

4 See Suryarayana et al (2011) for more details on the HDI prepared for Indian states.

## Water Supply

Figure-1 shows the urban water supply service status among Indian States in terms of access to improved water supply service. A large number of Indian States have a reportedly improved access to water supply service. In fact, the all India average of service shows 95.3% of the Households have improved water supply service.

**Figure- I: Improved Urban Water Supply among Indian States**



Only the States of Kerala and Manipur are exceptions, with a markedly below par coverage of 57% and 69% of the urban households. Himachal Pradesh has achieved a 100% water supply service coverage or access to households.

The bar graph also reflects somewhat low coverage in the North-East States, where the citizens appear to depend upon alternate/ own sources of water supply service.

## Sanitation

**Figure- I: Improved Urban Sanitation among Indian States**

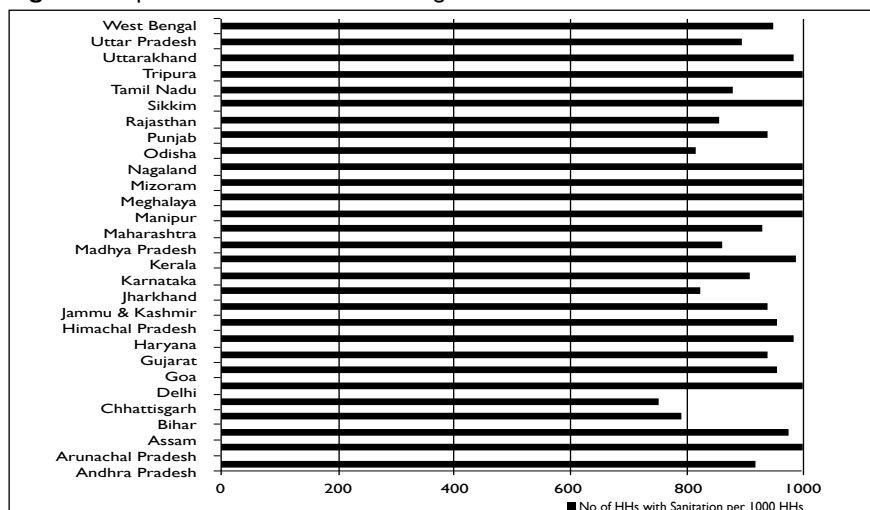


Figure 2 shows the urban sanitation service status among the Indian States in terms of the access to improved urban sanitation service. A large number of States have a reportedly moved towards complete access of households to sanitation. Although the all India average of service coverage at 88.7% of the Households having an improved sanitation service stands out less than that of urban water supply, it is no mean achievement.

Urban sanitation service access / coverage is low in the States of Orissa, Chattisgarh, Bihar and Jharkhand. Most of the North-East States have achieved 100% sanitation coverage or access to urban households. The States of Delhi, Kerala and Uttarakhand also have a very level of sanitation coverage.

The high levels of urban sanitation service access reflected in the bar graph also implies that the government move towards better sanitation and hygiene in the last decade are yielding results across the country.

### Solid Waste Management

**Figure-3:** Urban Solid Waste Management among Indian States

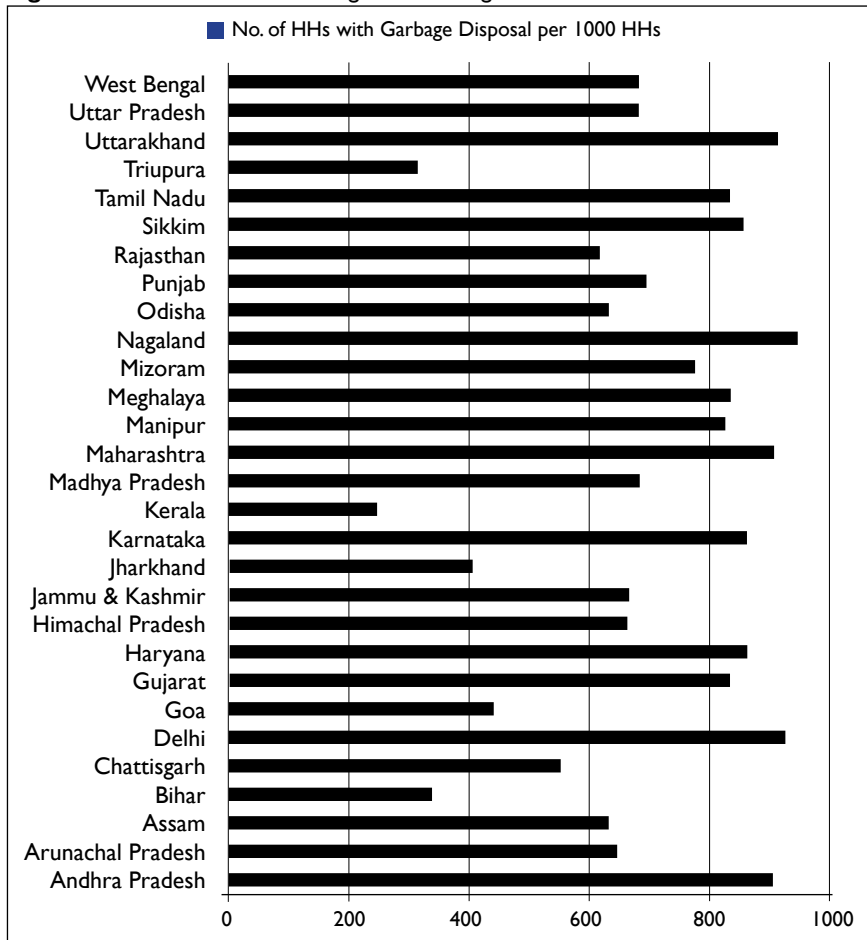


Figure-3 shows the solid waste management service status among Indian States in terms of the access to waste disposal service to urban households. It can be

seen a large number of the States have a reportedly poor access of this service to urban households. The all India average of service coverage at 78.6% of the urban households itself reflects that there is a lot of scope for improvement.

Solid waste management access/ coverage among urban households is low in the States of Kerala, Bihar, Jharkhand and Tripura. Most of the Southern States have high service coverage or access to households. The States of Delhi, Uttarakhand, Nagaland, Sikkim, Andhra Pradesh, Maharashtra and Karnataka have a high level of access to urban waste management.

The low levels of the access to solid waste management in urban areas reflected in the bar graph also implies that Indian cities are on a long way to go towards better waste management across the country.

### Electricity Supply

**Figure-4:** Urban Electricity Service among Indian States



Figure-4 shows the electricity supply service status of urban areas among Indian States in terms of the access to electricity service. A large number of the States have reportedly moved towards universal access of the service to urban

households. The all India average of 94.7% of urban households having electricity supply service stands out as no mean achievement.

Urban Electricity supply access/ coverage is low in the States of Jharkhand, Bihar and Uttar Pradesh. Most of the North-East States have achieved 100% electricity coverage or access to households.

Further, the high level of electricity supply reflected in the bar graph also implies that the government move towards power sector distribution reforms that began in 2004 are yielding results across the country. As a result, the electricity penetration among urban households has improved significantly.

### Urban Housing

**Figure-5:** Secure Urban Housing among Indian States

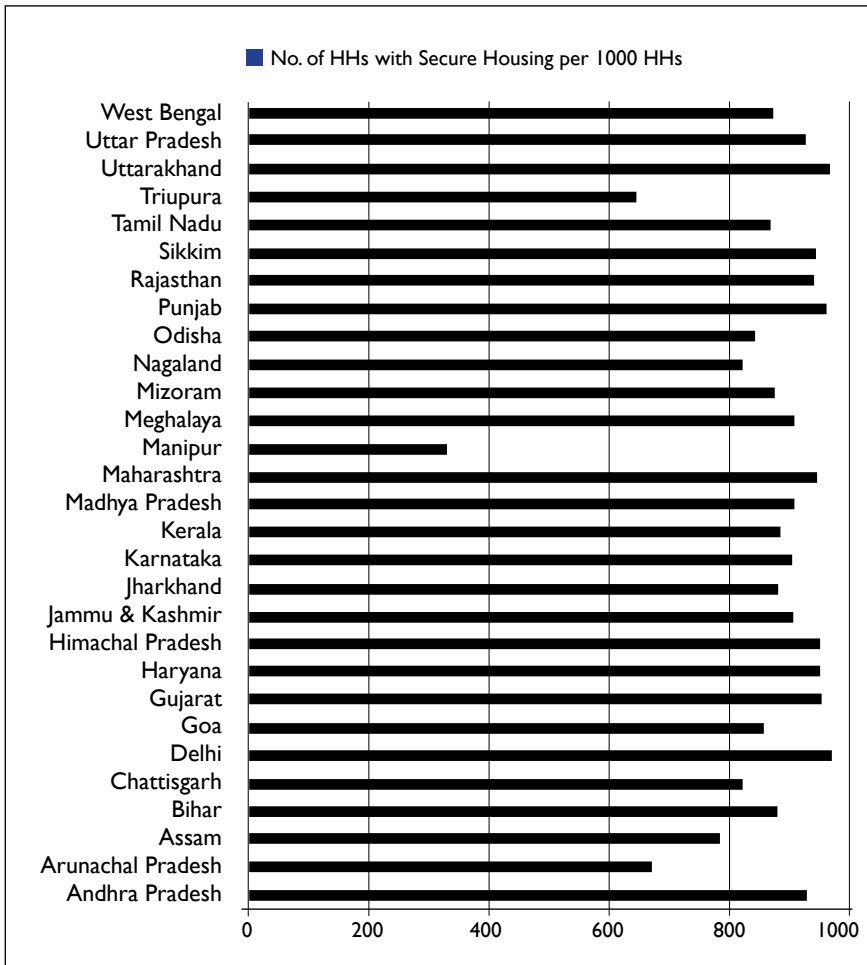


Figure-5 shows the urban secure housing status among Indian States in terms of the having/living in 'pucca house' i.e., houses built with durable construction materials. It can be seen a large number of the States have reportedly higher access to housing. The all India average of service at 88.6% of urban Households having secure housing appears to be a good coverage but it masks the existence of slums and squatter conditions.

Secure urban housing access/ coverage is low in the North East States of Manipur, Tripura and Arunachal Pradesh, which may be due to their peculiar topography.

Most of the Indian States have a high service coverage or access to urban households. The States of Delhi, Uttarakhand, Nagaland, Punjab Maharashtra, Himachal Pradesh, and Gujarat have a high level of access to secure housing.

The high level of access to secure housing in urban areas reflected in the bar graph also implies that cities in India are well on their way towards better urban housing across the country.

**Access to Basic Urban Services in Indian States:  
Aggregation and Depiction**

The five major basic urban services described above give respective sector-wise access status, which have to be summarized as one set of measure. This is proposed to be done in two-ways:

- aggregating the services (parameters) into a composite index (termed as BUSI)
- pictorial depiction of differential access status (as cob-web diagrams of service access)

*Construction of Basic Urban Services Index (BUSI)*

It is proposed to construct a composite index – Basic Urban Services Index (BUSI) – which combines/ integrates all the five basic urban services – water supply, sanitation, waste management, electricity and housing – for a better understanding of the access status. Such aggregation can be done through factor analysis, which gives us the linear combination of factor parameters, from which the composite index can be constructed. Table-1 shows the results of factor analysis performed in SPSS using the access data of the above five basic urban services.

**Table-1:** Principal Component Matrix of Basic Urban Services

Component Matrix	Component	
	1	2
Water	0.043	0.829
Sewerage	0.786	-0.296
Electricity	0.838	-0.091
Housing	-0.020	0.804
Garbage	0.735	0.393
Extraction Method: Principal Component Analysis. 2 components extracted.		

Source: Computed by the Author

Based on the factor/parameter weights shown in the Component 1 of Table-1, the BUSI is constructed by using the respective parametric data of the access to basic urban services of the Indian States. The composite score of BUSI of the Indian States is shown in Table-3 along with the ranking of the States based the composite score of BUSI.

*Graphical Depiction of Basic Urban Services*

Apart from constructing a composite index, another way of understanding the access status of basic urban services in the States is through the production of

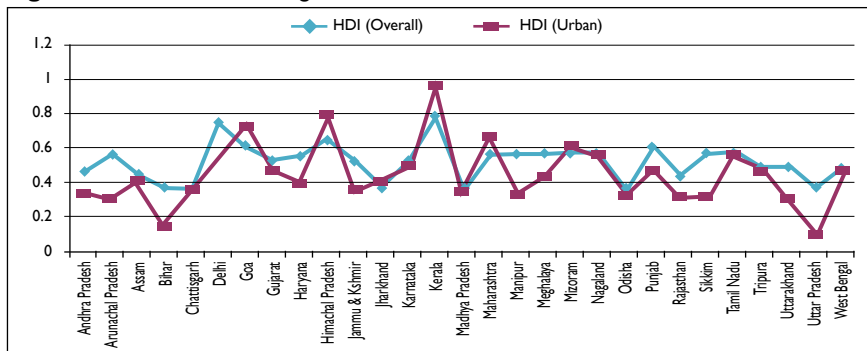
'cob-web' diagrams. For drawing these diagrams, normalized indices of the access to basic urban services are prepared first (using internal deviations of the observations and the range); later, these indices are shown graphically through 'cob-web' diagrams. ANNEXURE - I shows the graphical depiction of access to basic urban services in each respective State.

## Human Development Index (HDI) of Indian States

One of the premises of the current study is that the Human Development Index (HDI) of the States, the construction of which is now well established as a methodology and practice, reflects the general welfare of people from the human development point of view (as contrasted with economic development). HDI is normally measured at the country level to measure their levels of welfare and achievement on human development (which is in contrast to the conventional measures like economic development through GDP and its variants) by the UNDP starting in 1995. The construction of HDI is now extended to sub-national level i.e., State level, by the Government of India and the data pertaining to it was accessed online.

The HDI (overall) data was taken for the year 2007-08 available online from the Government of India portal. Also, recently, attempts were made to separate the HDI for urban and rural areas, therefore, attempt has been made to obtain the same for urban areas as well. Such data was derived and shown in a paper by Mukherjee et al (2011) for the year 2004 (which is an older data available but it may serve the purpose). Table-3 shows the HDI score of Indian States and their ranking on this measure. Figure-6 shows the fluctuation of HDI (both overall and urban) among the Indian States. Certainly, the States like Kerala, Haryana and Goa are in the forefront in terms of human development reflected through their attainment on the HDI.

**Figure-6** Status of HDI among Indian States



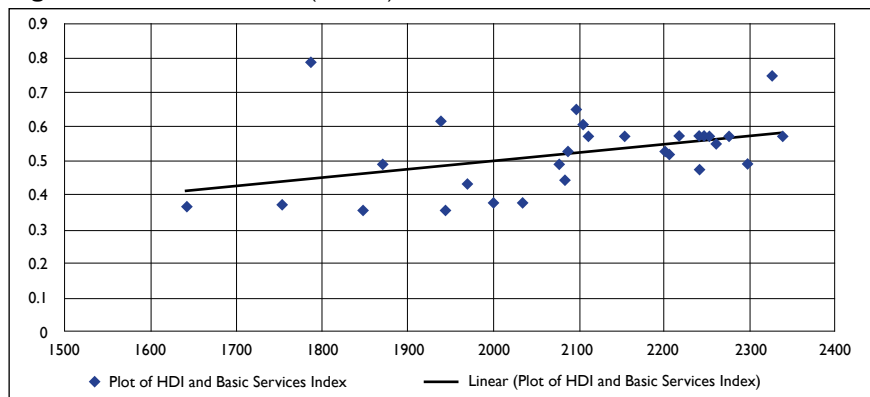
## Association between HDI and Access to Basic Urban Services

It is now laid down here that better access to basic urban infrastructure/services leads to better HDI level, as it supports the population in terms of supporting employment, education and healthcare. We attempt to find out the possible synergistic linkage through the inter-State data on HDI as well as BUSI that we



constructed earlier. When we look at the possible association of the HDI and Access to Basic Urban Services using graphical tool, there appears to be a synergistic linkage. The scatter plot of HDI (Overall) and BUSI shown in Figure-7 implies a positive association between the two of them.

**Figure-7:** Scatter Plot of HDI (Overall) and BUSI



The correlation analysis gives an understanding of the statistical association between the HDI and the BUSI. The results of correlation results are shown in Table-2. It clearly shows a moderate positive correlation between HDI (overall) and BUSI, which is also statistically significant. It therefore implies that better access to basic urban services will have a positive implication for the overall HDI of the respective States. However, I do not find any statistically significant or strong correlation between BUSI and HDI (Urban), which may partly be due to the older dataset of HDI (Urban) that has been used in the analysis.

**Table-2:** Results of Correlation Analysis

<b>Correlations</b>		
		<b>BUSI</b>
<b>HDI</b>	Pearson Correlation	0.405529
	Sig. (2-tailed)	0.029071*
	N	29
<b>HDI (U)</b>	Pearson Correlation	0.046314
	Sig. (2-tailed)	0.81153
	N	29

\* Correlation is significant at the 0.05 level (2-tailed)

Table-3 shows the ranking of Indian states on the HDI measure as well as the BUSI constructed.

**Table-3:** Status and Ranking of Indian States on HDI and BUSI

<b>STATE</b>	<b>HUMAN DEVELOPMENT INDEX</b>		<b>BASIC URBAN SERVICES INDEX</b>		<b>HUMAN DEVELOPMENT INDEX (URBAN)</b>	
	<b>HDI</b>	<b>Rank</b>	<b>BUSI</b>	<b>Rank</b>	<b>HDI(U)</b>	<b>Rank</b>
<b>Andhra Pradesh</b>	0.473	21	2240.666	9	0.336	20
<b>Arunachal Pradesh</b>	0.573	6	2111.117	14	0.305	26
<b>Assam</b>	0.444	22	2083.978	18	0.407	14
<b>Bihar</b>	0.367	27	1640.959	29	0.146	27
<b>Chhattisgarh</b>	0.358	29	1848.834	26	0.36	18

STATE	HUMAN DEVELOPMENT INDEX		BASIC URBAN SERVICES INDEX		HUMAN DEVELOPMENT INDEX (URBAN)	
Delhi	0.75	2	2325.471	2	N/A	N/A
Goa	0.617	4	1939.517	24	0.718	3
Gujarat	0.527	16	2200.209	12	0.468	10
Haryana	0.552	14	2260.474	5	0.397	16
Himachal Pradesh	0.652	3	2096.708	16	0.791	2
Jammu & Kashmir	0.529	15	2087.232	17	0.363	17
Jharkhand	0.376	25	1753.1	28	0.407	14
Karnataka	0.519	17	2205.012	11	0.5	8
Kerala	0.79	1	1788.161	27	0.954	1
Madhya Pradesh	0.375	26	2033.751	20	0.356	19
Maharashtra	0.572	12	2252.258	6	0.665	4
Manipur	0.573	6	2248.787	7	0.327	21
Meghalaya	0.573	6	2242.81	8	0.431	13
Mizoram	0.573	6	2217.949	10	0.608	5
Nagaland	0.573	6	2338.245	1	0.565	6
Odisha	0.362	28	1944.878	23	0.325	22
Punjab	0.605	5	2105.713	15	0.467	11
Rajasthan	0.434	23	1971.1	22	0.319	23
Sikkim	0.573	6	2275.895	4	0.319	23
Tamil Nadu	0.57	13	2153.714	13	0.564	7
Tripura	0.492	18	1872.008	25	0.466	12
Uttarakhand	0.49	20	2296.968	3	0.306	25
Uttar Pradesh	0.38	24	2000.141	21	0.097	28
West Bengal	0.492	18	2077.779	19	0.469	9

Source: Prepared based on the Secondary Data and the Construction of BUSI

NB: The HDI of North East States is given one index which is applied to all North East States

## Conclusions

Basic urban infrastructure / services assuming importance in the economic development – both at country level and State level - is a well known proposition. However, they can also assume importance in the human development of the respective States as well. This paper made an attempt to test this hypothesis (of association) by analyzing the correlation between the access to basic urban services and human development. The correlation analysis implies a statistically significant association between the access to basic urban services and human development in Indian states. The association, however, does not necessarily imply causality

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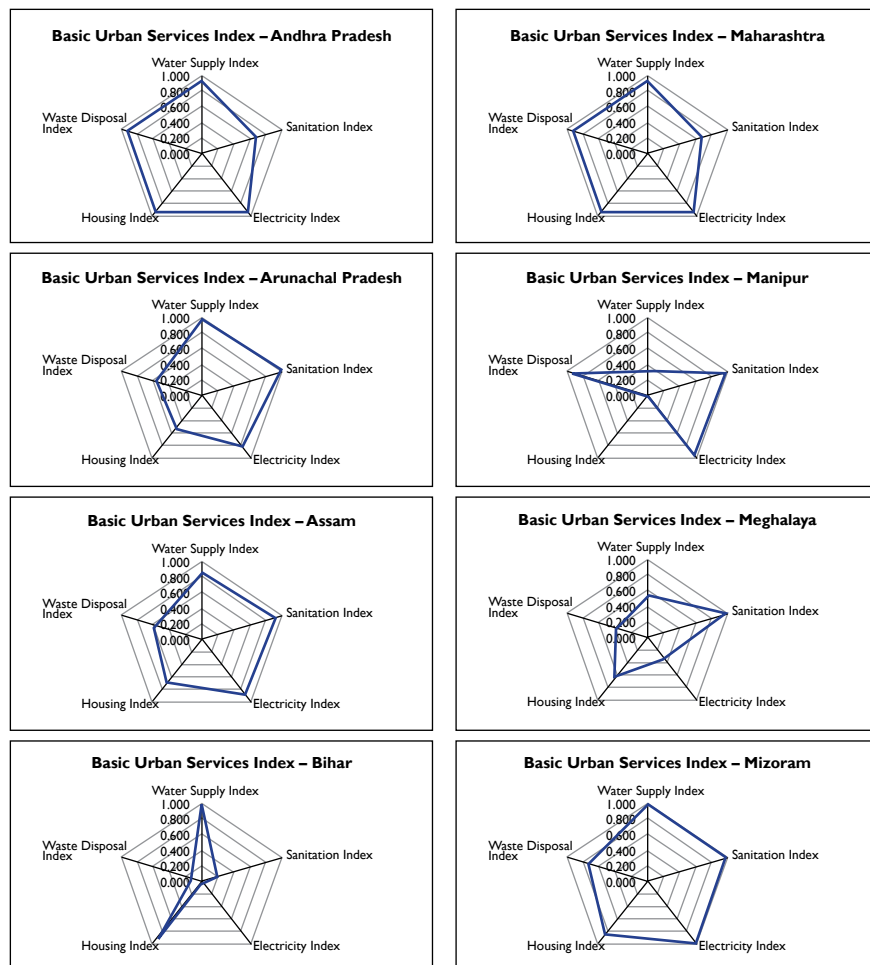
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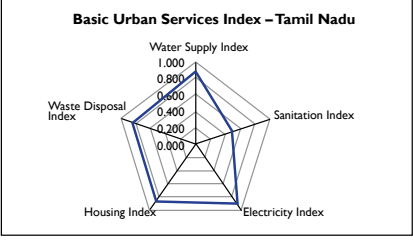
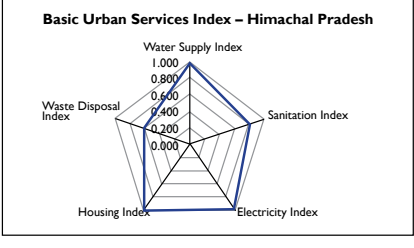
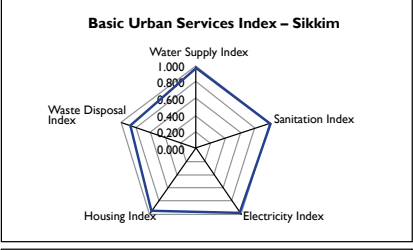
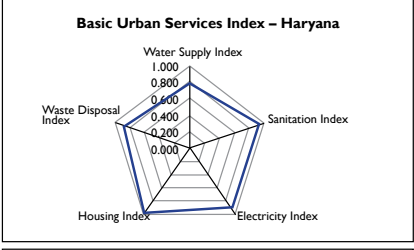
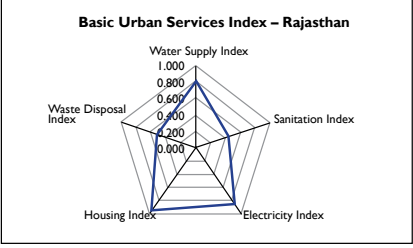
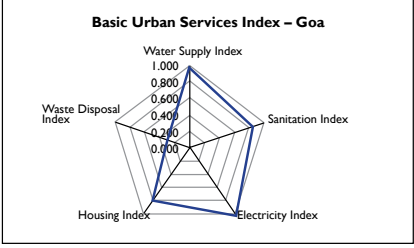
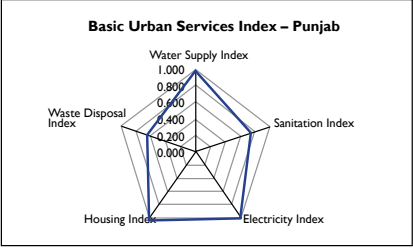
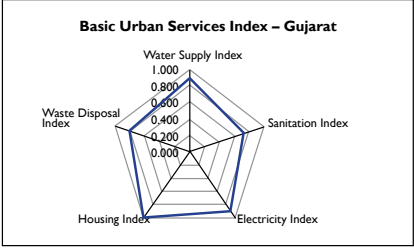
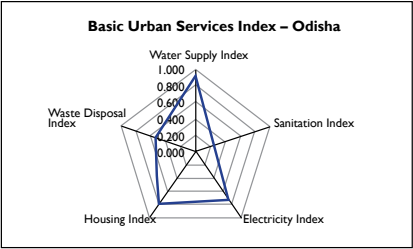
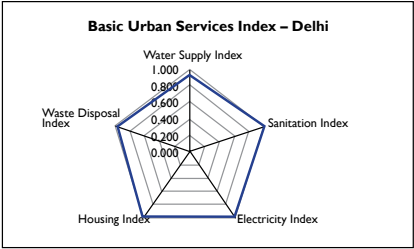
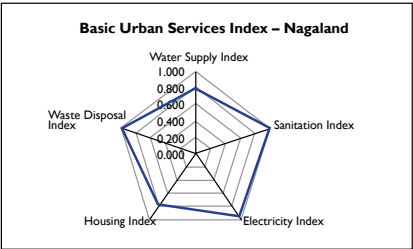
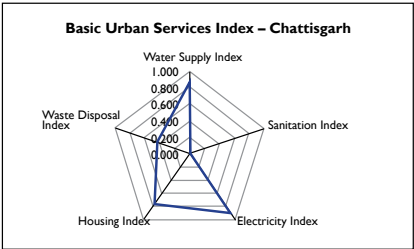
Mukherjee, S. & D. Chakraborty (2011). Is there an interdependence between Economic Growth and Human Development? Evidence from Indian States, *Indian Journal of Human Development*, 5(2), pp: 467-494.

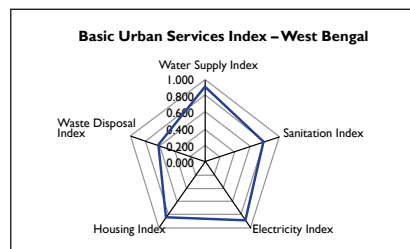
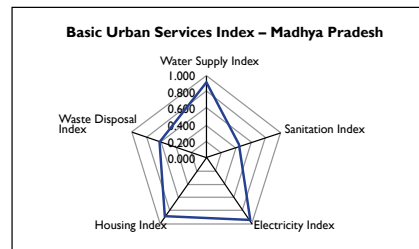
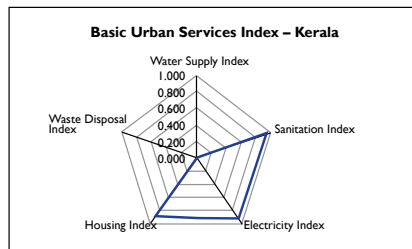
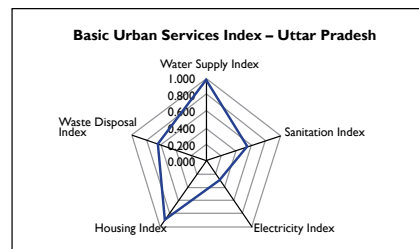
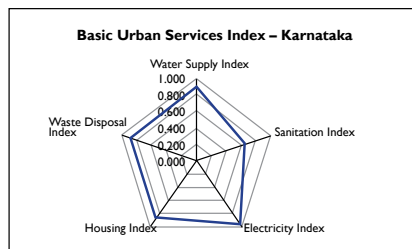
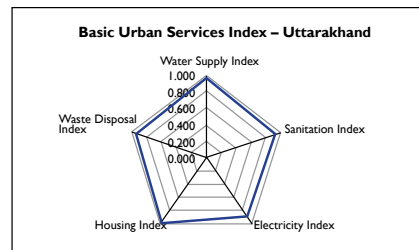
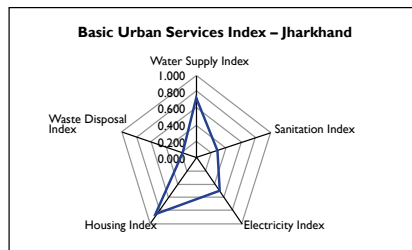
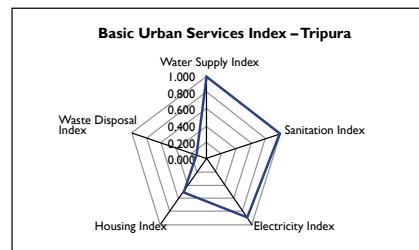
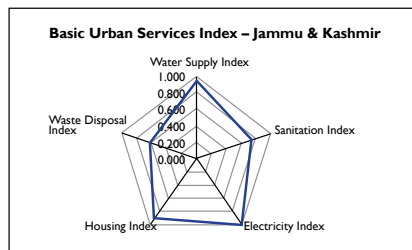
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# Exhaustion and Protection of IP Rights: Impact on Global Markets and Its Implication in Public Laws

Himanshu Mishra<sup>1</sup>

## Abstract

Over the years, the invasion of 'Exhaustion Doctrine' has agitated the global markets, which led many industrial firms to capitulate from third parties' action of parallel importation. The resultant disparity constituted by parallel importers causes fluctuation on pricing of goods resulting in tax differentials and difference in the currency rate pertaining to regional markets. The practice of gray marketing has however been restricted to a larger extent with the intrusion of WTO and domestic laws, from reselling. Many actions were assorted under trademark and copyrights law concerned in limiting the infringement of IP protected goods. The paper presents the need for further enforcement of intellectual property laws and the TRIPS involvement in minimizing the standards pertaining to 'Exhaustion Doctrine'.

**Keywords:** Exhaustion Doctrine, Grey Marketing, Parallel Importation, WTO, TRIPS

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## Introduction

Parallel imports appear to be complicated and enigmatic phenomena towards its impact over international trading, as it abides by the market laws, making them a legitimate practice. The underlying practice of parallel imports emerged, as a result of 'Exhaustion Doctrine'<sup>2</sup>. The term 'Exhaustion' here, refers to firm's limitation of utilizing intellectual property rights. When a product, which is IP protected, enters the market for commercial usage/exploitation, the given product could not be limited/exercised only by the enterprise, since they are exhausted. This can also be mentioned as 'First Sale Doctrine'.

In context to domestic laws, the extent of sale over IP protected goods from abroad was subjected under maximal exhaustion of IP rights. Considering the relevancy to issue, parallel importation could directly be regarded by the action of importation, carried out externally to distribution channels on proper basis, as negotiated by manufacturer. This can be ascribed, because of fact that IP owner or manufacturer belonging to a particular firm were devoid of any connection on the proper basis with that of third party who is indulging in parallel imports.

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2 [International Exhaustion and Parallel Importation](#). WIPO.

These practices and the underlying intricacies were collectively referred as ‘grey marketing’ of goods. The practice appears to be misleading the consumers from identifying actual legitimate distribution channels which are in control of industrial firm/IP owner<sup>3</sup>.

However, the practice of parallel imports appears unsuspicious as they don’t display anything “grey” regarding it. These are correctly stated under English Patents Courts for the Deltamethrin decision over ‘mysterious’ and ‘grey’ distribution of channels through which the product enters to a country<sup>4</sup>. Additionally, it is noted, products itself cannot infringe IPR of owners. The resulting discrimination in price from one country to another, served to be the primal reason behind the practice of parallel importation.

Producers as well as firm manufacturers generally insist on maintenance of discrimination in product’s price, whereas the consumers on other hand are perplexed with fluctuating prices. In realm of global economy, where there exists a rapid upsurge in international trade, mitigate the underlying trade barriers. The resulting gains are attained by third parties/importers by fixing a cheap price which are under effect. However, on the contrary this resulting failure incurred by the variance in price limits the patent holder’s benefits of his/her innovation over the particular patented product of concern. This brings a grim condition for patent owners from not enjoying their property rights, full-fledged. With a series of law enforcements and amendments of national and international laws over limitation of parallel importation has impacts in restricting the grey marketing of patented goods to a better extent, which is stated in forthcoming sections of paper.

## **Doctrine of Exhaustion: Relevancy and Underlying Concepts**

Doctrine was actually intended towards exhausting or other terms extinguishing the rights exclusively over sales of produces on commercial aspects, with the prior authorization of patentee. However, the article which is subjected for patent clearly embodies that the product was invented and is owned under the creation of patented owner or firm. The patented owner is relieved from all the rights for exclusion of activities concerned with resale, repair or usage of articles.

Doctrine is transformed from its actual function, as it became a defensive force against infringement of patented properties in terms of export/import activities and licensing and most prominently on parallel trading. The defendant is suspected for infringing only if he/she performs activities which concerns under commercial or industrial aspects, as majority of patented products which are subjected to international markets, goods which are manufactured or requires manufacturing process for finished product. If a defendant indulges in such prohibitive activities before, during or after the manufacture of patented goods, aids the patentee for claiming the rights.

Since the incorporation of IPRs are territorial in nature, in exempt of first sale. However, in the case of intellectual property over particular country, might be under risk of exhaustion of IP rights to the patent holders in that particular jurisdiction. This can be attributed basically on facts that, patent holders rely on

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3 Chen, H. L. (2007). Gray marketing and its impacts on brand equity. *Journal of product & brand management*, 16(4), 247-256.

4 RousselUclaf v. Hockley International, decision of 9 October 1995, [1996] R.P.C. 441

domestic rights which is autonomous, as the rights could be expanded within the particular country for controlling the market sales as well as their action towards prohibition of importation of infringing goods from the borders.

The territorial rights are permitted by following nation's sovereign authority. The doctrine concerning with Exhaustion of rights are acceptable and appeared justifiable. However, with consequent implementation of doctrine, with respect to act on national exhaustion is considered as: "*non-tariff barrier for parallel imports of product and right to import for the owner*"<sup>5</sup>, such that the competition within the market can be restored, thereby resulting in restoration of competition in markets as well. This leads patentee towards up taking restrictive measures for protection of patented goods.

However, the rights of the IP holders over controlling the intellectual property and their distribution in market has been restricted as a result of exhaustion of IP laws. Once, property or patented product is sold legally in any part of world, it facilitates parallel importation on global scale. The facilitation of parallel importation is achieved, with the commencement of legal sale of the patented products in markets. This particular exhaustion of patent holder's rights is represented as 'international exhaustion'. By adopting this policy, many countries have encouraged the competition between the traders and these countries have even avoided non-tariff barriers with the help of national exhaustion doctrine devises<sup>6</sup>.

With the emergence of international community such as European Union (EU) has rivalled in development on new form of exhaustion, referred to as 'Community exhaustion'. The exhaustion doctrine serves as compromising element which bridges the conflicting interest between international and national exhaustion. This particular exhaustion pattern is extracted from the national exhaustion principle, this also includes the international exhaustion, resulting in intrusion of exhaustion of IP rights in all of its member states, and subsequently with practice of parallel imports, if first sale are initiated for an IP protected goods.

These rights however seem to be limited, as the exhaustion of rights cannot be perpetuated to any other countries lying outside the EU community, which remained unaffected. TRIPS negotiations between developing as well as developed nations were conflicting over the concept of exhaustion. The resultant consequences has rendered the issue on exhaustion doctrine with the aid of enforcing the domestic laws, since the IPR laws are territorial, thus the protection can be extended on possessing IPRs over the similar property by maintaining it parallel with different national territories.

National exhaustion, on the other hand cannot indulge in affecting parallel IPRs over other territories, since the commencement of first sale doctrine appears to be within a national territory and empowers IPR holders to maintain their IPR and enforcing the rights over parallel markets. This approach facilitates patent holders to dissect international marketing and restrict the free movements of patented goods which are much more susceptible to parallel importation. On the contrary, the international exhaustion rights indulge in exhaustion of rights of IP rights,

5 Valletti, T. M., & Szymanski, S. (2006). Parallel trade, international exhaustion and intellectual property rights: a welfare analysis. *The Journal of Industrial Economics*, 54(4), 499-526.

6 Chen, Y., & KE, M. (2000). Vertical pricing and parallel imports. *University of Colorado at Boulder, Working paper*.



irrespective of jurisdictions, after first sale and commercialization of patented product are done. Thus, acting contradictory to national exhaustion, and thus facilitating in parallel importation of goods from third parties, without any sort of violation against one's IP rights of patent holder.

This underlying, conflicting interests between international and national doctrine over the exhaustion of rights, has thus made free trading of goods, in the form of parallel importation as legitimate practice, on an overall. In TRIPS Agreement, the preamble states, "*..... to reduce distortions and impediments to international trade, .....the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights does not themselves become barriers to trade .....*"<sup>7</sup>, has been quoted in Part I of Article 3<sup>8</sup> of national treatment and also in Part I of Article 4<sup>9</sup>, over the benefits which were granted over IP, is subjected for extension for all members, thus it eventually weans off against the exhaustion issue, with the adoption of hands-off approach, according to Article 6 (Part I) through the statement that "*nothing in this Agreement shall be used to address the issue of exhaustion of intellectual property rights*"<sup>10</sup>.

The resulting discourse over parallel importation and exhaustion doctrine became quite contentious, especially on the conflicts concerned with allowing the pricing of products to the cheapest through incorporation of international exhaustion principle, whereas the national exhaustion facilitates by allowing patent holders over retention of certain control of their patented products, even after the first sale. This economic dispute concerned with exhaustion doctrine, are quite disagreed with the developing countries from that of developed nations, which resulted in the disagreeing with incorporation of Part I, Article 6 of TRIPS Agreement.

### Emerging Vs Developing Economies

With rough disagreement on international exhaustion of patents has bifurcated the strategy over IP protection between developing nations and developed nations. The latter were eventually constituted with an established network with overall net importers globally, and thus these nations intended towards handing their support over international exhaustion as well as encouraging parallel importation of IP goods. However, in case of developing nations, the intellectual property is attributed essentially as a tax paid by their citizens to the citizens of developed nations, who indulge in exportation of IP goods. With identifying these underlying issues concerning with international exhaustion and the resulting practice of parallel importation has led many scaffolding contentions on these matters, with respect to the welfare of consumers<sup>11</sup>.

The developed nations defend the practice by arguing over lowering on goods cost for the consumers, with the incorporation of parallel imports. The consequent reduction in cost facilitates over competition of trading which forcefully reduces the overall prices of goods. This strategy is beneficial for the developing countries, as it favours them by accessing healthcare related goods and other critically

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7 WTO, TRIPS Agreement, 1994.

8 Part I, Article 3 of TRIPS Agreement

9 Part I Article 4 of TRIPS Agreement

10 Part I, Article

11 Chiappetta, V. (1999). The desirability of agreeing to disagree: The WTO, TRIPS, International IPR exhaustion and a few other things. *Mich. J. Int'l L.*, 21, 333.

important goods to be available; even then they are controlled/ covered under IPR. Under such instances, the developing countries did not impose strong enforcement of IPR security over healthcare and drug related goods. However they were forced by developed countries through WTO and TRIPS towards enforcement of IP protection on drugs.

Since IPR is limited in its association with scope, user's privilege, duration, liberalization and safeguarding the rights. It acts in a certain way in facilitating exclusion on rights from owners for non-owners. Under such scenario, exhaustion doctrine became another controversial element, which serves as a restricting factor and a heated issue for developed as well as developing nations. When coarsely observed, the exhaustion doctrine functions as an anchor between emerging countries and developed countries regarding the global IP laws and trans-border trading and global development.

Thus the rationale of free market on exhaustion doctrine is quite persuasive over adoption on broader application by the third-party countries. The countries under common law, where the exhaustion doctrine is deeply rooted under alienability of goods and the suspicion which was raised by the judges under common law aids in restriction of such alienated goods. Hence, the right holders were given the consideration for acquirer for alienating the work freely after its acquisition.

### **TRIPS Involvement in 'Exhaustion Doctrine'**

The TRIPS Agreement comprises of collapsed doctrine and implementation on international IP laws towards their exhaustion. Their role over incorporation of doctrine and how it affects the likelihood of international trading and importation on the whole, starting from the movement of goods and their services, makes them quintessential. The doctrine addresses over the degree of control on goods and services and how it can be ceased over the due course of time.

IPR framework, imparts a robust legal foundations in exchange of goods within the national and trans-national borders. The provisions were controlled by TRIPS with exceptional flexibility for the member states towards exercising the 'Doctrine of Exhaustion'. According to the Article 28 of TRIPS statement states that, the patentees have all sorts of rights exclusively on their rights for making, usage, placing them for sale, selling as well as importation of the patented goods. On the hind note, the footnote (6) of Article 28 adds a minor caveat on the 'exclusive right for importation', for the clarification by stating that *"This right (i.e. the right of importation), like all other rights conferred under this Agreement with respect to the use, sale, importation or other distribution of goods, is subject to the provisions of Article 6."*<sup>12</sup>

On the other hand, Article 6 states *"nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights."* The statement is further more clarified with Doha Declaration (Article 5(d)) stating that *"the effect of the provisions in the TRIPS Agreement that are relevant to the exhaustion of intellectual property rights is to leave each member free to establish its own regime for such exhaustion without challenge..."*<sup>13</sup>

With the advent of TRIPS negotiations, fair and elaborative discussion over exhaustion issue was raised. However the respective jurisdiction has not approached over its agreement over following generalized sets of rules on exhaustion, for new

12 Article 28 of TRIPS Agreement<sup>23</sup>yj

13 Doha Declaration 5(d)

WTO. On contrary, WTO member states agreed on entitling their adoption of exhaustion rules on their own. The embodiment of this agreement was included in Article 6, by preclusion of anything within the agreement for being utilized for addressing exhaustion of rights for settlement of disputes, by subjecting the provision aided by TRIPS towards its treatment on national as well as MFN (Most Favored Nations) range. TRIPS permission on member states over the limitation of exclusive right on importation of goods is thus strongly assured under Article 28 towards extent to which 'Exhaustion doctrine' can be exercised.

### ***Impact of Regional laws on 'Exhaustion Doctrine'***

As the IP laws are territorial in nature, the impact of regional laws over 'Exhaustion doctrine' is quite significant. In case of US law, existence of exhaustion remains as separate entities in the copyrights, trademarks and patented goods, thus representing the incorporation of different policy pertaining to the type of products protected under IPR. Even when the courts emphasize over the generic exhaustion principles, exhaustion doctrine tends to be different within the IP regimes.

The issues in international exhaustion pertaining to copyrights started since the 1997 as seen in *Quality King Vs L'Anza*<sup>14</sup>. It is a controversial case on grey market selling of cosmetic products with the labels which bear the copyrighted labels of US. The case involves with Quality King which inducted reselling of the cosmetics in US with copyrighted labels by parallel importer who bought the patented goods from overseas. The importers were involved in arbitraging with price differentials over products. Products were manufactured and exported from US, but they were returned backed to US markets through global sales marketing of the goods. The copyright owner in labels claimed regarding the practice of import products into US, since it violated from distribution rights. Importer defended by asserting exhaustion doctrine, by implying first sale doctrine, which was stated under the section 109 (a)<sup>15</sup>, which was applied with the practice of importation and the rights under section 601. However it lacked clarity on its limitation and application in separate statutory provision towards establishment of importation right. US Supreme Court ruled the section 109(a) because of its limitation and also it has restricted the rights under section 601 which dealt with the distribution rights as stated in 106(3)<sup>16</sup>.

Similarly the court's recognition on patent exhaustion doctrine in 2010 case of *Adams Vs Burke*<sup>17</sup>, is quite an essential nature and practice of transactions, and with transporting of patented inventions. In Burke, Court could determine the utilization of restrictions over manufacturer-assignee from territorial usage of patented goods. In this case, the restriction over the distribution of patented coffin lids, which was subjected to distribution over a ten-mile radius, from the Boston City. The Court witnessed patent exhaustion over barring the claim as stating that the distributor had "*acquired the right to use that coffin for the purpose for which all coffins are used.*"<sup>18</sup> "[I]n the essential nature of things," the Court wrote, "*when the patentee, or the person having his rights, sells a machine or instrument whose sole value is in its use, he receives the consideration for its use and he parts with*

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14 523 U.S. 135 (1998).

15 Section 109 (a) of US Copyright Act

16 Section 106 (3) of US Copyright Act

17 84 U.S. 453 (1873).

18 Id. at 456.

*the right to restrict that use.*"<sup>19</sup>. Thus the protected goods can pass "*without the limit of the monopoly.*"<sup>20</sup>The patentee was allowed to impose post-sale restriction over the product's usage, as the Court declared, "*Would be to engraft a limitation upon the right of use not contemplated by the statute nor within the reason of the contract to say that it could only be used within the ten-mile circle.*"<sup>21</sup>Thus the patentee could not negotiate regarding the terms over the transaction carried out on the first sale, as that would extend the rights of 'Patent Act' which appeared to be unreasonable and conflicting, when examined under Contract law.

EU is a complex governance structure that exercises its power on commercial aspects over affiliate states, wherein governance structure comprised both judicial system and parliamentary bodies. Exhaustion principles in EU were basically assigned under basis of Article 34 and 36, which was devised under TFEU (Treaty on the Functioning of European Union). Article 34 states "[q]uantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States."<sup>22</sup>, whereas Article 36 emphasizes over "the protection of industrial or commercial property."<sup>23</sup>

Both patents as well as trademark categories falls exceptionally under commercial property with certain qualifications to be met with. Copyright law, aids in prevention of rebroadcasting of works related to cinematography in countries that are lying within the EU. The broadcasting over country however cannot exhaust its rights on other countries. When court intervened under the problems which were continuously arousing from copyright issues over performance related works, made them reason that, they "*are not the same as those which arise in connection with literary or artistic works the placing of which at the disposal of the public is inseparable from the circulation of the material form of the works, as is the case of books or records.*"<sup>24</sup>

The decision concerning with performance rights on films suggesting limitations over exhaustion in case of reselling of copyrighted contents, appears to be allowed, while practice of indulging in development of additional copies is prohibited. In case of exhaustion of patented rights in EU, patented item which was subjected under distribution in market by any country, which is among the member states of EU, are assented with exhaustion of distribution rights can be practiced within the Union. This particular rule represents regional/community exhaustion. Thus the rule is valid, when the country is not able to recognize that the distributed product falls under patent safety.

However, with incorporation of Article 34 of TFEU, two major intricacies have arisen, which aids over exception on exhaustion of patented goods. Firstly, the produced goods falling under compulsory license, which lacks restriction of activities/practices concerning with exportation or exhaustion, as it cannot be applied. Rationale behind this issue is that, patentee will acquire right to gain profits, once distribution of patented goods is done. This is due to approval of drugs under the patent cannot be subjected for exhaustion, as the produced drugs requires regulatory approvals and set of actions are carried out before its

19 Id.

20 Id.

21 Id.

22 Article 34 TFEU

23 Article 36 TFEU

24 Ghosh, S. (2014). The Implementation of Exhaustion Policies: Lessons from National Experiences.

commercialization. Under such cases, the patent owner is devoid of any sort of monetary gains/profits from the initial distribution of patented goods.

### **India's Perspective on IP Laws and Exhaustion Doctrine**

India, being the pursuant of TRIPS Agreement, the jurisdictional amendment on IP laws must meet minimal substantive standards that underlies with the Agreement. The Indian Copyright Law is deeply rooted to the colonial period, when the legislation was enacted under British Copyright reform. However current copyright act, which is under practice, was passed after its post-colonial period by the year, 1957. The recognition on exhaustion of patented products under literary, musical, artistic or dramatic works are included in the Section 14 of Copyright Act. The Act restricts on importation practices, as it majorly authorizes Registrar of Copyrights, for prohibiting imports which are especially, the *"copies made out of India of the work which if made in India would infringe copyright shall not be imported."*<sup>25</sup>

Thus the section provides the copyright owner with prior authority over examining infringing practices and exhaustion of goods. After 2010, with the reformation of Copyright Act, the parliament did not grant the provision on adopting international exhaustion, which in turn aided in parallel importation of copyrighted products. The provision states *"that a copy of work published in any country outside India with the permission of the author of the work and imported from that country into India shall not be deemed to be an infringing copy."*<sup>26</sup>

With interpretation over the exhaustion provisions which was under existence in Copyright Act. Delhi High Court has rejected international exhaustion, by 2011, with the court's decision in *John Wiley & Sons Vs Prabhat Kumar Jain*<sup>27</sup>. Similarly, the manufacturers of Indian generic drugs were actively involved in parallel importation of drugs to countries like Brazil and Thailand during the 1990s and there was no case law regarding the patent exhaustion for these scenarios. There are certain key provisions which aided the importers to attain the patented products, from its first sale, as the section 107A(b) under Patent Act states, *"importation of patented products by any person from a person who is duly authorized under the law to produce and sell or distribute the product shall not be considered as an infringement of patent rights."*<sup>28</sup>

### **Conclusion**

Exhaustion doctrine appeared to have certain generic features which traverse across different categories of intellectual property and in different jurisdictions. The rights of IP owners were extinguished, ever from the commencement of first sale, which facilitates in exhaustion of rights, resulting in resale and parallel importation. Thus it embodies the IP rights towards questioning the inefficacy of product's license. Similarly, the doctrine are applied in a diversified manner involving the geographical scope over purpose of doctrine, and also with categorization of different practices and techniques which can be employed for applying exhaustion doctrine in full-fledged manner. From the overall analysis in 'Exhaustion Doctrine' and underlying complexities, there is a necessary need for

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25 Section 14 of Indian Copyright Act, 1957.

26 Id.

27 John Wiley & Sons, In. v. Prabhat Kumar Jain, CS (OS) No1960/2008, decided on 17 May 2010.

28 Section 107A(b) of Patents Act, 1970.

imposing certain implications and enforcements in current IP laws, especially on the exhaustion practices and its limitations within the particular region of interest or country, well-being of consumer on economic aspects and accessibility with the legitimate products, especially under healthcare and technology which aids in improvement and most importantly on the issues concerning with mitigating the incidents of infringement cases. With reference to exhaustion doctrine, parallel importation has become an international phenomenon, rather than handling it as a local/national phenomena. Consequently, issues pertaining to parallel imported goods due to exhaustion of rights has become a daunting task for the industrialists and manufacturers. From the study, these underlying limitations towards patent claims could be regarded as non-tariff barrier, rather than treating them under 'Exhaustion Doctrine'. The involvement of TRIPS on these issues requires obvious considerations on reframing precise key limitations on 'Exhaustion Doctrine'.



# Challenges of Water Provisioning in Hyderabad: Evidences from the Field

**Samanta Sahu\***

## **Abstract**

The pace of urbanisation in Hyderabad in the past few decades is quite rapid. As the city is the largest contributor to the states GDP (earlier for the undivided state of Andhra Pradesh and now the state of Telengana), business establishments and also common people have found it as a suitable destination for all the economic activities. With an increase in service sector base, there is a consequent increase in the city's population. Providing basic civic services to the ever increasing population is a challenge to the city administration. Drinking water being the most basic necessity, the city administration appeared to have made every effort in providing basic requirements to the people. However, they appeared to have fallen short of expectations owing to the ever growing demand for water.

The paper discusses the challenges of water provisioning for the residents of Hyderabad, the sixth largest metropolis in India. The paper is divided into two sections. The first section gives an overview of Hyderabad and the provisioning of drinking water before the creation of Hyderabad Metropolitan Water Supply & Sewerage Board (HMWS&SB). It also briefly discusses various provisions of the HMWS&SB. The second section discusses various issues and challenges concerning provisioning and access to water in the city drawing largely from field visits.

**Keywords:** Access, Hyderabad, Urbanisation, Water

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## **Introduction**

The pace of urbanisation in Hyderabad in the past few decades is quite rapid. As the city is the largest contributor to the states GDP (earlier the undivided state of Andhra Pradesh and now the state of Telengana), business establishments and also common people have found it as a suitable destination for all the economic activities. With an increase in service sector base, there is a consequent increase in the city's population. Providing basic civic services to the ever increasing population is a challenge to the city administration and drinking water being the most basic necessity, the city administration appeared to have struggled in providing basic requirements to the people.

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An attempt is made in the paper to explain the various challenges and issues concerning provisioning of water to the people in Hyderabad. It is divided into two sections. The first section gives an overview of Hyderabad and the provisioning of drinking water before the creation of Hyderabad Metropolitan Water Supply & Sewerage Board (HMWS&SB). It also briefly discusses various provisions of the HMWS&SB. The second section discusses various issues and challenges concerning provisioning and access to water in the city drawing largely from field visits.

## **Hyderabad: A Profile**

The city of Hyderabad has a history that goes back to 400 years. It was founded on the banks of the river Musi in 1591-92 by Muhammad Quli Qutb Shah and remained the capital of the Quli Shahi rulers. It was an independent province under the Nizams during the British period. When India got independence in 1947, the State of Hyderabad was merged with the Union of India and later became the capital of the undivided state of Andhra Pradesh.

Hyderabad emerged as one of the prominent cities of the post-independent India and it is one of the largest metropolises in India today. With an area of about 778 square kilometres, the Hyderabad Urban Agglomeration (HUA) consists of Municipal Corporation of Hyderabad (MCH), Secunderabad cantonment, the ten surrounding municipal towns, Osmania University, some out growths (OGs), and a few smaller settlements.<sup>1</sup> The city hosts people from different walks of life and from different regions in India. The growth of IT sector in the last decade has propelled the city's growth phenomenally. From April 2007 onwards it became Greater Hyderabad Municipal Corporation (GHMC) based on a notification released on 16th April 2007 by then Government of Andhra Pradesh. The city is divided into (5) Zones (including North, South, Central, East and West) and 17 circles to provide better services. The 12 surrounding municipalities<sup>2</sup> were merged into the earlier MCH area leading to the creation of the Greater Hyderabad Municipal Corporation (GHMC). For a comprehensive planning for GHMC, then state government created an exclusive agency in the name of the Hyderabad Urban Development Authority (HUDA).

## **Demographic Trends in Hyderabad**

Hyderabad recorded rapid population growth in the last few decades. From a population of 12.5 lakhs in 1961, its population reached 25.5 lakhs and almost trebled to 43 lakhs by 1991. According to the 2011 census, city's population was 67.3 lakhs. It is ranked as sixth largest city among the major metropolitan cities in India. It is estimated that by 2021 the HUA will have a population of more than one crore. The decadal growth rate of Hyderabad Urban Agglomeration (HUA) was 43 per cent and 67 per cent during seventies and eighties respectively. But it came down to 31 per cent during 1991-01. However, much of the spatial expansion in the last two decades in the HUA has occurred in the erstwhile surrounding municipal towns. These towns recorded a high growth rate of 71 per

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1 City Development Strategy, Municipal Corporation of Hyderabad, Hyderabad, 2004. Also see [www.ghmc.gov.in](http://www.ghmc.gov.in)

2 The municipalities are; L.B. Nagar, Malkajgiri, Quthbullapur, Patancheru, Serilingampalli, Kapra, Kukatpally, Ramachandrapuram, Uppal Kalan, Alwal, Rajendranagar, Gaddiannaram



cent in nineties as compared to only 18.7 per cent by the core city (erstwhile MCH area). Several of these surrounding municipal towns have been growing at high rates from eighties onwards. Their share of population in the HUA has increased from about 23 to 30 per cent while there is a corresponding decline of population in the erstwhile MCH area.<sup>3</sup>

## **History of Water Provisioning in Hyderabad**

When one looks into the history of water provisioning in Hyderabad we come across interesting aspects. The city used to have an organised water supply system. It is documented;

“Sir Salar Jung the Great did so much for Hyderabad that it seems fitting that a memorial to him should take the shape of such a useful institution as water supply, which must be a blessing to every resident of the city, be he prince or pauper, high or low, rich or poor. The supply of water principally comes from Mir Alam lake ... There are twenty seven miles of piping, ranging from three to twenty four inches in diameter, which can supply on average of fifteen gallons of water per day to every inhabitant of Hyderabad, so that the city is not behind the cities of British India in this respect.”<sup>4</sup>

Initially people in Hyderabad obtained water from rivers and open dug wells. For example, people of Lalapet, located in south of Hyderabad numbering about 5000 used to get their drinking water from a big well situated within a garden belonging to The Nizam, the Raja Pramukh of Hyderabad. This is so since time immemorial. Later the Secunderabad Municipal Corporation (SMC) obtained permission from The Nizam, to install a pump at the well and take water supply through pipes to the people of Lalapet at the cost of Secunderabad Municipal Corporation.<sup>5</sup> Gradually with the increase in the population of the city, there was dependence on outside sources. The Umada sagar (an irrigation tank) near Chandrayangutta was first used as the source of drinking water for Hyderabad.<sup>6</sup> Later the Mir Alam tank had been the main sources of drinking water to Hyderabad. The Hussain sagar (which is now in the heart of the city of Hyderabad) built in 16<sup>th</sup> century provided water to some localities, and towards the end of 19<sup>th</sup> century, water from Hussain Sagar was exclusively used for drinking purpose. On the other hand, Secunderabad received its supply from Faulk sagar at Jeedimetla.

Hyderabad was inundated by an unprecedented flood caused by the river Musi on September 28, 1908. Most parts of the city were submerged and there was great loss both in terms of property and human lives. In order to prevent the recurrence of such disasters, two dams were constructed across the river Musi and its

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3 There was a clear cut difference between the jurisdiction of Municipal Corporation of Hyderabad (MCH) and the municipal towns those are surrounding MCH. These municipal towns were independent of MCH in their functioning and even had their separate water supply system. Hyderabad Metropolitan Water Supply & Sewerage Board (HMWS&SB) only supplied bulk water to the municipal towns and levied a certain amount for the same. The municipal towns themselves were responsible for the distribution in their municipal jurisdiction. These municipal towns got merged with the MCH and led to the creation of Greater Hyderabad Municipal Corporation (GHMC) in 2007.

4 --- Glimpses of The Nizam's Dominions, (published by special permission and under the direct patronage of His Highness The Nizam's Government), C. B. Burrows, Bombay and London, 1899, p.184.

5 MV Naidu, (ed), City of Secunderabad (Deccan), Secunderabad Municipal Corporation, 1955, p.27.

6 Naram Krishna Rao, “The Capital City's Water Supply: A Well Crafted Tragedy”, News Letter, Forum for a Better Hyderabad, Hyderabad, 2008, p.38-39.

tributary river Esi on the advice of Sir M. Visweswaraya, the celebrated engineer from Hyderabad between the years 1922-1927. This followed the Osmansagar and Himayatsagar reservoirs respectively on both the rivers. Since then these water bodies continued to be principal sources of drinking water to the city. Once, Osman sagar and Himayat sagar water supply was commissioned in the 1920s<sup>7</sup>, all other sources became insignificant and later abandoned.

A separate agency Hyderabad Water Works was commissioned in 1922. With this, long conduit was built from Osman sagar to Asifnagar (Near Sarojini Devi Hospital), and service reservoirs were built at Red Hills, Bogulkunta and Chilkalguda to supply water to the city. In addition, a sump was constructed on Banjara main road to pump water to reservoirs built at Banjara Hills. The Osman sagar conduit was tapped near Shaikpet and water was treated and supplied to the military areas and also the civil population in and around Golconda fort. A separate reservoir for Secunderabad was constructed at Marredpally.<sup>7</sup>

## **Water Provisioning in Hyderabad After Independence**

After Hyderabad was named as the capital of undivided state of Andhra Pradesh, consequent to the re-organisation of states in the 1950's, there was sudden influx of population. As the city grew, the urban sprawl encroached into vacant lands and water bodies due to the increasing pressure on land for housing and other activities. Many water channels that used to carry floodwaters from one lake to the other in a catchment area were encroached by private agencies. In addition discharge of untreated industrial effluents has led to the total degradation of the water quality in many water bodies. Non implementation of building regulations and pollution control laws strictly, has encouraged encroachment and pollution of water bodies.

Consequently meeting drinking water demand for the city population became more challenging. The two reservoirs Osmansagar and Himayatsagar utilised to their maximum level and there was further search for additional sources of water. In the year 1958, a scheme was undertaken to draw water from the Manjira river which is near Sangareddy in adjacent Medak district, about forty miles from Hyderabad. The scheme was commissioned in 1965. Water was pumped from the river to service reservoirs at Lingampally from where it comes by gravity to the city.<sup>8</sup> Later in the year 1972, due to persistent demand for drinking water, the Manjira phase II was taken up to draw additional water from the Manjira river.<sup>9</sup> As the demand for water increased, Manjira phase III and IV were taken up and there was search for additional sources which included water from Krishna river and Godavari river.

The additional demand for water coincided with the rise in population including slum population. Especially in the slum areas which are ill served at times inadequate physical infrastructure and other technical issues such as land tenure meant that provisioning and access to water in the slums become a cumbersome process. As the situation deteriorated and the pressure mounted, government took initiatives in development of the poorer areas which also included piped water supply.

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<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> At this point, there was demand from the enroute villages to supply water to them for drinking purposes from the two water supply schemes.

## **Institutional Arrangements**

Before the present Water Board was created the Hyderabad Water Works Department was entrusted with the responsibility of supplying drinking water to the city of Hyderabad. The Hyderabad Water Works Department was part of then Government of Andhra Pradesh. It was headed by a Chief Engineer, attached to the Municipal Administration Department of the state government usually dominated by technical experts. The Organisation was predominantly an Engineering Department for making arrangements for the supply of water. This agency got its grants from the government, to meet both capital expenditure and deficits in the Operations & Maintenance costs. The erstwhile Hyderabad Water Works was running like any government agency with no focus on financial management and orientation for providing quality services to the people. With a view to ensure autonomy and to plan effectively the government created an exclusive agency the Water Board in 1982. But it was abolished a year after it was created. Later on the present Board was created in 1989.

## **Hyderabad Metropolitan Water Supply and Sewerage Board (HMWS&SB)**

The Hyderabad Metropolitan water Supply and Sewerage Board (HMWS&SB) was constituted by an Act of then Andhra Pradesh Legislative Assembly with effect from November 01, 1989. HMWS&SB was created to give administrative and financial independence and increased responsibility while provisioning drinking water to the people. The HMWS&SB has a mandate to plan, design, construct, organise, execute and manage water supply systems in the city. According to the Act, the HMWS&SB consists of the following members;

**Table:** Composition of the HMWS&SB

1	Chief Minister	Ex-Officio Chairman
2	Minister for Municipal Administration	Ex-Officio Vice-Chairman
3	Secretary to Government, Municipal Administration and Urban Development Department	Ex-Officio Director
4	Secretary to Government, Finance Department	Ex-Officio Director
5	Secretary to Government, Irrigation Department	Ex-Officio Director
6	Commissioner, Municipal Corporation of Hyderabad	Ex-Officio Director
7	Chairman, A.P. Pollution Control Board	Ex-Officio Director
8	Director, Health	Ex-Officio Director
9	A Chief Engineer of the Board, to be appointed by the Government	Director
10	One person nominated by the Government of the rank of Accountant General	Director
11	One person of the I.A.S. cadre to be nominated by the Government	Managing Director

Source: The Hyderabad Metropolitan Water Supply and Sewerage Act, 1989.

## **Provisioning Drinking Water in Hyderabad: Access and Quality**

The city of Hyderabad without any perennial river is predominantly dependent on the lakes and tanks for drinking water purposes as discussed earlier. As the city grew physically and demographically over the years, the sources of drinking water got either dried up and shrunk and in some areas are polluted. Consequently there is always search for new water sources sometimes in the distant rivers (such as Krishna and Godavari rivers) to meet the growing water needs.

There are three main sources from where drinking water needs of Hyderabad are met. These are: (1) HMWS&SB (Individual house service connections, group connections, water tankers and public stand posts (PSPs), (2) Private sources (Packaged drinking water, bottled mineral water, private water tankers and water from neighbours), and (3) Ground water (Individual bore wells, group bore wells and hand pumps).

While water supplied by the water board is the primary source for majority of the residents in the city, there are also people who depend on the private supply and ground water for their daily needs. However, in the past few years, the dynamics of drinking water provisioning to the people in Hyderabad have undergone phenomenal changes. One can notice an increasing trend of depending on private and ground water source. Inadequate amount of water and the low quality supplied by the water board is often cited as the main reasons.

### **Provisioning of Drinking Water in the Slums and Other Poorer Areas**

There is a considerable increase in the number of slums and population in the slums in Hyderabad. The then Government of Andhra Pradesh had adopted a policy of tenure regularisation during 1995. Accordingly all slum dwellers residing on government lands for more than five years are eligible for tenure regularisation. In the case of private lands, government acquires them and regularises the tenure. Once regularisation is complete, government agencies take up several projects regarding housing improvement and other municipal infrastructure development such as drinking water supply.

There are two categories of slums, i.e., notified slums and non-notified. Slums were notified under the Andhra Pradesh Slum Improvement Act, 1956 for redevelopment and improvement. However, lack of clear policy guidelines, cumbersome procedures, political influence etc, have remained major problems in notification of slums. The developmental programmes are implemented only in notified slums, thereby depriving the poor in non-notified slums of even the barest services. Lack of clear and transparent guidelines has not only affected the process of notification of slums but also influenced the investment trends. Generally, there is a strong tendency to distribute the available funds equally amongst the wards irrespective of the slum population, which leads to skewed development and limited impact.<sup>10</sup> The consequent result of such government policy has led to limited access to basic services like drinking water.

### **Observations from the Field**

The following section discusses the broad trends of issues and challenges in provisioning and access to water in Hyderabad. While the observations are made in case of the city of Hyderabad, the same trends largely can be seen in other cities around the country.

### **Inequitable Access to Water**

Evidences from the field make it clear that access to water is inequitably distributed among different sections of the city residents. A clear segmentation of the

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<sup>10</sup> Government of Andhra Pradesh, Municipal Administration and Urban Development (UBS) Department, G.O.Ms.No.397, M.A, 25.09.2004.

residents in terms of economic capability has taken place vis-a-vis the state policy. Consequently access to water is decided according to a person's ability to pay or the economic capability. Further, houses situated in the remote areas are hardly checked for water supply by the water authorities. This has resulted in inequality in distribution and uses of the water which has brought discontent among the water users of several localities. There is a general feeling that due to inefficiency on the part of the officials there is prevalence of inequality in access to water.

### **High Tariffs**

There is a major complaint among the people that they are charged higher than the water actually they use. The water meters fixed to every service connection seem to be hyper sensitive and it operates even with air pressure. Thus in several cases it is faulty water meters which lead to higher tariffs. In contrast such complaints are unheeded by the HMWS&SB officials. Sometimes it is quite taxing for the people as the officials suggest for replacement of old meter with a new one which works hardly for 2 to 3 months. Therefore it is observed that there is a gap in official record and actual functioning of those meters.

### **Indifference Attitude of Officials**

Addressing grievances seem to be a major issue for the households. As the male member of the family goes out for work it is quite difficult for the female member to visit HMWS&SB office to give a complaint. It was also seen that to give complaints regarding any water supply related problems, people have to take a day leave from the job. Though the telephonic provision is made for users' benefit but normally it does not work and complaints do not get resolved. Therefore, people have to visit the office in person to resolve their water supply related problems. Many a times people's grievances are often ignored by the HMWS&SB officials and people who have close contacts with the HMWS&SB officials get better and quicker responses. It was also found that some respondents have paid extra amount (somewhere between Rs50 to Rs.200) to get their work done. Such practices seem to be regular in order to get their work done or the grievances addressed.

### **Insecurity of Supply**

Insecurity of water supply is observed to be a major issue concerning water access in the city. As a result city residents are making use of different kinds of additional arrangements to cope with water insecurity. Because they are not informed in advance regarding any disruption in water supply, they feel that they need to be prepared for any unforeseen circumstances such as water shortages, or irregular supply. The additional arrangement varies from users to users as it depends upon their socio-economic background and the capacity to spend on it. Majority of the households have overhead tank, base tank, private motor etc., to fetch and store water. In addition dependence on the private water tanker suppliers who supply water at any time on payment basis has increased considerably. Consequently, a huge private water market in the form of private tanker supply, bottled water supply, etc., have grown in the city discretely.

## **Taxing the Poor**

The major sufferers of the present system of water supply seem to be the people in the slums and other improvised areas. In the slums many users do not have individual water supply connection. Consequently, the residents are dependent on the water supplied through tankers and neighbours or the hand pump for their daily water needs. The HMWS&SB officials on their part say they are in the process of giving household water connections to such families. Since their economic capacity is limited they cannot afford to go for additional sources of supply such as bore well and tankers water supply. As a result they have to manage with whatever they get through the HMWS&SB supply. Therefore, for majority of the people residing in slums the quantity of water is inadequate and the quality of water supplied is questionable. They have to spend extra amount for the purchase of water filter or boil water before consumption. In this situation the present supply system is more taxing the poor and at times if they are not able to spend on it, they have to risk their health by consuming contaminated water.

## **Right to Vote and Access to Water**

People having right to vote attracts the political class in India. Political parties vie for representing such groups of people who are voters and the various issues they face. However, when someone does not have the right to vote, they become non-entity for the political parties as well as for the state machinery. Several people living in the slums and other improvised areas in the city are not recognised as voters and hence do not have voter identification cards to exercise their democratic rights. This makes them even more vulnerable as they are treated as secondary citizens and no one is around to listen to their water woes. Once accorded as voters or given voting rights by the Election Commission of India, makes these people living in slums and other poorer areas important for the political parties and they become part of the state processes. This implies that access to democratic institutions such as right to vote make access to water easier.

## **Emerging trend in Community Participation**

Though in many instances there is no formal water supply to the slums, it is purely the efforts of local people that has paid and now they get at least some access to water. According to Anirudh Krishna, this can be interpreted as active social capital.<sup>11</sup> It is their informal associations through protests and memorandums rather than any organised activity that has brought some access. They form the mutual support networks and come together when need arises and disperse as soon as their issue is attended.

## **The Cost Recovery Approach**

One of the major observations during the field visit was the HMWS&SB's keenness in revenue collection, water tariffs and the monthly water bills. It is visibly clear that the orientation of HMWS&SB from service provider has shifted to that of financial management and financial stability of the water Board. The slogan for

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<sup>11</sup> Anirudh Krishna, *Active social Capital: Tracing the Roots of Development and Democracy*, Columbia University Press, Columbia, 2002, p.5.

water supply by the Board is *I will supply water but pay for it*. The approach has changed to cost recovery from service orientation. This is also evident from the Board's christening the citizens as "customers" while earlier they were called as water "users".

However, water supply by the state cannot be looked as pure business because it is not a commercial department. People could be charged for conserving and for accountability and not to make profit out of it. Because of the importance of water in human life government must be accountable for water supply to the people. While rich people can buy water from market poor people ask for government service and that is why they elect governments. Thus, the cost recovery approach does not put the water Board in good light.

From an analysis on different aspects of water supply, it is seen that people with sound financial background and good contacts and influence have their access to water secured both through the State and market mechanisms. It is important to note that network building with the officials of HMWS&SB is one best way to get easy access to water. In contrast, people belonging to the lower income group and those in the slums are primarily dependent on the public supply of water as they cannot afford the market supply and hence their access to water is limited. The most important aspect of access to water is, households having individual house service connections, at least, have access to water to meet basic minimum water needs. However, for those households who are outside the formal water supply network of the State agencies, access to water even to meet basic minimum needs is not secured. Further an emerging trend is seen that the political parties are making access to basic services such as water as their agenda to fight elections.

It is also observed and verified through various sources that in the households with piped water connection, households are facing problems like erratic supply timings, insufficient quantity, low pressure, faulty meters, leakages and above all the billing problem. However, the incidences of water borne diseases surprisingly seem to very low because of the preventive measures households take before consuming water. They either boil water or filter before consuming pointing towards the lack of trust people have on the portability of public supplied water and an increased dependence on private mechanisms to make water portable. Thus the market has made inroads into the households in a discreet manner. In the end, access to water for the people is inequitably distributed depending primarily on their economic capacity and personal contacts. As usual while some people get more and their water access is assured either by the State supply or by market mechanisms, while others have to manage with whatever they get through the State supply system.

To sum up, while the government appeared to have made various efforts in provisioning good quality and adequate quantity of water to the people of Hyderabad, they seem to have fallen short of expectations in various areas as discussed. While the state provisioning of water has failed to meet the expectations of the people, the market or the private suppliers have made inroads into the arena of domestic water provisioning in a big way. One can see how the market has insidiously made inroads into the houses of people in the form of water purifiers, private bore wells, water pumps and a host of other such mechanisms to secure adequate quality and quantity of water. Further, market mechanisms have also got involved in the direct delivery of water through private tanker supply as well as

bottled water catering to a major section of the society who can afford it. Thus, it can be said that, market has come to replace the State in a big way on the face of a faltering state provisioning of drinking water.

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# The Volatile Journey of India's Reservation Policy through Legal Amendments & Inconsistencies

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## Abstract

Reservations in education and employment are commonly used to correct anomalies resulting from historical practices of discrimination of some kind. In India, the 'Varna' or 'Caste' system, practised since ancient times, disturbed the social fabric by creating deep-rooted social backwardness based on caste. The Indian State, right since independence, has been continually trying to correct this backwardness and uplift the weaker sections of society through reservations in education and government jobs. However, being subjective in nature, the definition of 'backwardness' is open to several interpretations. With the Indian State having pursued a purely caste-based definition of backwardness for long, reservations have remained highly controversial throughout India's post-independence history and have often ended up being challenged in the courts on various legal and constitutional grounds. In this paper, we attempt to record the journey of India's Reservation System through various legal and constitutional amendments, and court cases. We observe that it has proved to be an arduous task for the government to provide reservations in a manner that is unanimously judged as 'just' and 'fair'. As a result, the subject is prone to interpretation challenges and legal inconsistencies. The recent 103<sup>rd</sup> Amendment to the Indian Constitution that proposed to extend reservation benefits to the economically weaker sections (EWS) of society presents another argument in favour of the debate on the volatile journey of reservation.

**Keywords:** Caste, Constitution, Economically Weaker Sections (EWS), Mandal Commission, Ninth Schedule, Reservation Policy, Supreme Court

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## Introduction

Reservation, under the subject of Indian Law, is an example of affirmative action by the State. Herein, a percentage of seats are reserved for the socially backward sections of society, including the Scheduled Castes (SCs) and the Scheduled Tribes

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(STs), in government jobs and in government educational institutions, with except for religious/linguistic minority institutions (Sharma, 2017). Dating back in the pre-independence era, reservations were implemented by the then Government of the Presidency of Madras in the form of a quota-based reservation system for different communities in 1927, which encompassed to include SCs and OBCs by a Government Order (G.O.) of 1947, popularly known as the Communal Government Order (Hantal, n.d.). It was the start of a system of caste-based reservation.

However, this Communal Government Order was challenged in the Madras High Court (HC), through two court cases, because it violated Articles 15(1) and 16(2) of the Indian Constitution (*The State of Madras Vs. Champakam Dorairajan, 1951<sup>[1]</sup>*; *B. Venkataraman Vs. The State of Madras, 1951<sup>[2]</sup>*). The Madras HC then struck down the Communal G.O. ruling it as unconstitutional and being in clear violation of Articles 15(1) and 16(2) (*The State of Madras Vs. Champakam Dorairajan, 1951*).

Subsequently, the judgement was challenged in the Hon'ble Supreme Court (SC) of the country, wherein a seven-judge Constitution Bench, in 1951, upheld the Madras HC judgement. Ruling that the G.O. relied upon caste as the **sole factor** for backwardness, the SC held that it violated Articles 16(2) and 29(2) as it indicated a delineation according to caste. (*The State of Madras Vs. Champakam Dorairajan, 1951*; *B. Venkataraman v. The State of Madras, 1951*) While Article 16(2) provides for non-discrimination based on the basis of caste, religion, race, etc. in matters of public employment, Article 29(2) provides for non-discrimination on similar account in government maintained educational institutions.

Besides, it also appears that the Communal G.O. was clearly against the philosophy in the very preamble to the Constitution which declares:

"We, the people of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens:

- *Justice, social, economic and political*
- *Liberty of thought, expression, belief, faith and worship*
- *Equality of status and of opportunity and to promote among them all*
- *Fraternity assuring the dignity of the individual and the unity and integrity of the nation*

In our constituent assembly this twenty-sixth day of November, 1949, do Hereby adopt, enact and give to ourselves this constitution."<sup>[3]</sup>

This Supreme Court judgement of 1951 resulted in widespread agitation across Tamil Nadu in protest against the quashing of the Communal G.O. (Hantal, n.d.) The unrest was so intense and persistent that the Government of India succumbed to the public and political pressure from Tamil Nadu (Hantal, n.d.). In 1951, two months after the SC judgement, the Government of India, under the leadership of Prime Minister Pt. Jawaharlal Nehru, moved the First Amendment to the Constitution, by inserting clause (4) in Article 15 along the lines of Article 16(4). Article 15(4) as it stands today, reads as follows:

"(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."<sup>[4]</sup>

This Constitutional Amendment effectively nullified the earlier judgement delivered by a seven-judge Constitution Bench of the highest Court of the country.

Consequently, under this amendment, the Madras Government, disrespecting the earlier judgement given by the apex court, signed an Executive Order in 1951, allowing reservation to the Backward Classes and the Scheduled Castes (SCs) in government jobs and in educational institutions.

It was the first step towards legalising and implementing caste-based reservations and paved the way for a plethora of future Constitutional Amendments to support caste-based reservations. On one hand, even though it tried to deal with the social inequalities resulting from the centuries-old caste-based discrimination prevalent in the Indian society, this measure was in sharp contrast to the judgements given by the Hon'ble Supreme Court in the cases of *The State of Madras Vs. Champakam Dorairajan (1951)* and *B. Venkataraman Vs. The State of Madras (1951)*

Reservation is perhaps the best example that portrays exercise of legislative as well as executive power, wherein the legislature overstepped its Constitutional Authority by exploiting the power of amending the Constitution through the clause 'as and when genuinely required', bestowed upon it by the Constitution. By passing multiple Constitutional Amendments, often rendering as ineffective various HC/SC judgement concerning reservation that came after 1951, the Government of India gave rise to continuing conflict and controversy on the subject.

For over six decades now, the political class and the policymakers have been obsessed with reservation as the only viable tool for affirmative action (*Sahoo, 2015*). They have made a mockery of the Indian Constitution and the entire judicial system by not complying with HC/SC judgements, and instead, abusing legislative power by ceaselessly bringing in Constitutional Amendments to invalidate those judgements. Consequently, over the period, many more castes/communities/minorities have grouped to show strength and have demanded reservation through widespread agitation, destruction of public property, and violence, often leading to lawlessness in the country. It is time for policymakers to explore alternate options for affirmative action, to address concerns of equity and social upliftment of backward classes.

Our paper seeks to discuss the journey of the Reservation System of India over the past seventy years, explaining in detail several legal inconsistencies that at times even made a mockery of the Indian Constitution.

We build our case of caste-based reservation by discussing critical HC/SC judgements concerning reservation in chronological order, while capturing the response of the legislature and the executive, and highlighting the inconsistencies in reasoning and legal arguments that arose in the process. We also examine some specific instances of legislative and executive overreach over their constitutionally defined limits.

### ***M.R. Balaji Vs. The State of Mysore (1962)***

After the First Amendment in 1951, in 1962 the issue of determining the criteria for assessing backwardness was dealt with under *M.R. Balaji Vs. The State of Mysore*<sup>[5]</sup>, wherein the newly inserted Article 15(4) was examined at length by the Hon'ble Supreme Court. The Government of the State of Mysore, using its Executive Power, had issued a G.O. whereby backward classes were identified solely based on caste. This G.O. was challenged in the Supreme Court, wherein a five-judge bench struck down this basis of classification, quoting several reasons.

#### Article 15(4) states

“Nothing in this article or clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”[6]

The SC primarily stressed upon the fact that ‘classes of citizens’ was not identical to ‘castes of citizens’, besides ruling that backwardness under Article 15(4) needed to be both social and educational. It pointed out that although caste may be an admissible and relevant factor in determining the social backwardness in case of Hindus, it could not be used as a sole and dominant test for assessing social backwardness of religious groups like Christians and Muslims, because they do not recognise or practise such a caste system (*Rajeev D., 1998*).

Further, it emphasized that using caste may be improper when the goal was to eradicate caste itself, as it would only exaggerate the role of caste and create greater caste-consciousness among people (*Mehta & Billimoria, 2017*). With this judgement, the use of caste for assessing the backwardness of a group became impermissible under law, placing a maximum limit of 50%, the SC judgement also aimed to keep the percentage of reservation at reasonable levels. The five-judge bench headed by then Hon’ble Chief Justice BP Sinha, while setting aside the G.O. reserving 68% of medical and engineering seats for SCs, STs, and other backward classes, said in their verdict, ‘...we are reluctant to say definitely what would be a proper provision (total reservations) to make. Speaking generally and in a broad way, a special provision should be less than 50 percent; how much less than 50 percent would depend upon the relevant prevailing circumstances in each case.’(*Prasad, 2017*) This is the main reason why the Mandal Commission, which has been discussed later on in this paper, restricted the OBC quota to 27%, as this quota along with the SC/ST quota of 22.5%, brought up the percentage of reservation to a critical level of 49.5%.

Later on, in the case of the *State of Mysore – R. Chitrallekha & Anr Vs. The State of Mysore & Ors. (1964)*<sup>[7]</sup>, it is notable that the Supreme Court (SC) upheld a modified order of the government that defined ‘backwardness’ according to criteria such as income, occupation, and other economic factors, without any mention of caste (*Mehta & Billimoria, 2017*).

#### C.A. Rajendran Vs. Union of India (1967)

However, with the passage of time and events, the complexity of arguments and decisions on the subject kept on increasing. There arose not only significant differences of legal opinion between the judiciary and the executive with regards to the reservation, but the judiciary itself seemed divided over the issue. This became apparent especially when the Hon’ble Supreme Court of India passed judgements contrary to its previous judgements, concerning the use of caste as a criterion for assessing backwardness.

An early case was *C.A. Rajendran Vs. Union of India (1967)*<sup>[8]</sup>, where the apex court held the view that certain states were wholly socially and educationally backward; and therefore, upheld the central government’s identification of backwardness as related exclusively to a list of castes (*C.A. Rajendran Vs. Union of India (1967)*; *Mehta & Billimoria, 2017*). It was a significant turnaround in the judicial stance over the reservation, wherein the Supreme Court, without

explicitly disagreeing with *M.R. Balaji Vs. The State of Mysore (1962)*, rendered as ineffective its own past judgement by permitting the use of caste as the sole criterion for classification of backwardness.

*Rajendran (1967)* became a precedent for several other future judgements of the Supreme Court such as in cases - *Triloki Nath Vs. J. & K. State (1968)*<sup>[9]</sup>, and *A. Peeriakaruppan Vs. State of Tamil Nadu & Ors. (1970)*<sup>[10]</sup>, wherein the SC continued with the stance taken by *Rajendran (1967)*, and permitted the use of caste as the sole criterion for assessing backwardness.

### **State of Uttar Pradesh Vs. Pradip Tandon (1974)**

In 1974, in the case of the *State of Uttar Pradesh Vs. Pradip Tandon (1974)*<sup>[11]</sup>, the SC again took an opposite stance by setting aside the use of caste ultimately, deserting from the case of *Rajendran (1967)*. *It ruled that caste cannot be allowed to be even one of the factors in assessing social and educational backwardness, as it would violate Article 15(1) which states, 'The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.'* (Mehta & Billimoria, 2017). Thus, once again upholding the directive of Article 15(1) of the Indian Constitution, the SC removed caste as a criterion completely and treated backwardness in any form as distinct from caste.

Further, the SC in this case effectively sided with the original stance taken by it in the *State of Madras v. Champakam Dorairajan (1951)*, when the issue of caste as a backwardness criterion was first brought into judicial consideration.

## **Conflicting Judgements in Disregard of 'Strength' <sup>[12]</sup> of the Bench**

The judgements mentioned above appear to have taken contradictory approaches in identifying the criteria for judging the social and educational backwardness of a class, resulting in conflict regarding whether caste can be considered as a criterion for backwardness, and if so, to what extent it can be used for the purpose.

Another important thing to note here is the fact that *C.A. Rajendran Vs. Union of India (1967)* was decided upon by a five-judge bench of the Supreme Court. Hence, it appears even more inappropriate for a three-judge bench in the *State of Uttar Pradesh Vs. Pradip Tandon (1974)* to overturn a previous judgement which was decided by a five-judge bench. On the other hand, we note that the Supreme Court in *The State of Uttar Pradesh Vs. Pradip Tandon (1974)* sided with an earlier ruling of itself, i.e. *The State of Madras Vs. Champakam Dorairajan*, which was in fact decided upon by a seven-judge bench, which ruled the use of caste as a defining factor as being in gross violation of Articles 15(1) and 16(2) of the Constitution.

Along similar lines, it is also surprising to note that a five-judge bench of the SC in *C.A. Rajendran Vs. Union of India (1967)*, ruled against a judgement by contradicting in its entirety *The State of Madras Vs. Champakam Dorairajan (1951)*, which had been ordered by a more substantial, seven-judge bench and hence, which logically served as a better precedent.

These observations are consistent with the SC ruling in *Central Board of Dawoodi Bohra Community Vs. State Of Maharashtra & Anr (2004)*<sup>[13]</sup> which ruled that laws laid down by larger benches of the Hon'ble Supreme Court are

binding on any subsequent benches of lesser or equal strength (*Mustafa and Singh, 2018*). In case of disagreement, a bench of lower strength can only refer the matter to the Hon'ble Chief Justice of India (CJI) to again place the issue before a bench of more considerable power compared to the court whose judgement is up for consideration. A Bench of lower strength cannot doubt the correctness of the decision delivered by a larger Bench. Further, only a Bench of co-equal strength can raise objections over the accuracy of the views taken by a prior bench of co-equal strength (*Mustafa and Singh, 2018*).

## Constitutional Perspectives on Discrimination

The usage of caste as the sole determining factor / criteria for deciding upon backwardness appears to violate Articles 15(1), 16(1), and 16(2) of the Constitution of India, which have been quoted below. Furthermore, we also observe that some of the Articles of the Constitution are themselves in contrast to each other. While Articles like 15(1), 16(1), and 16(2) use direct language against discrimination based on caste, on the other hand, Articles 15(4) and 16(4) support that the State can make provisions to deal with backwardness. It is the latter that enable a welfare State to make provisions for treating backwardness and add caste as a criterion by explicitly mentioning SCs and STs as backward classes.

Article 15. Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth.

"15(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them." [14]

Article 16. Equality of opportunity in matters of public employment.

"16(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State." [15]

"16(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State." [16]

On the contrary, we note that the Constitution also contains Articles 15(4) and 16(4):

- "15(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes." [17]
- "16(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State." [18]

However, it is essential to note that Articles 15(1), 16(1), and 16(2) were present since the very beginning in the initially accepted Constitution, as drafted by the Constituent Assembly itself, whereas 15(4) was inserted into the Constitution only in 1951 by the Parliament, to render as ineffective the judicial ruling in *State of Madras v. Champakam Dorairajan (1951)*. In our opinion, Article 15(4) itself contradicts Article 15(1) which strictly prohibits any caste-based discrimination, besides various other forms of discrimination. Hence, the legality of the very introduction of 15(4) is debatable and should be subject to judicial scrutiny and review.

Firstly, it was brought in bad faith to encroach upon the judicial domain by nullifying the judgement of a seven-judge special bench of the Hon'ble Supreme Court of India. Secondly, it was introduced despite being in sharp contrast to the then-existing Constitutional provisions, especially Article 15(1) – which forms a part of what is known as 'basic structure of the Constitution', and which, consequent to the SC ruling of 1973 in *Keshavananda Bharati vs. State of Kerala*<sup>[19]</sup>, cannot be altered or violated by the legislature under any circumstances.

Indeed, Constitutional Amendments to correct anomalies or update to current needs are often imperative, but before such changes are made sufficient public debate must be carried out. In such matters that affect each citizen of the country, transparency in notification is critical. Adequate time and space should be covered before the legislative processes are completed. The world's largest democracy should uphold such best practices.

## **Mandal Commission – A Tragic Experiment to Understand Backwardness**

In 1979, the Government of India, under Prime Minister Morarji Desai appointed the Second Backward Classes Commission, headed by B.P. Mandal, which came to be known as the Mandal Commission. The Commission was tasked with among other things, to determine the criteria for defining and determining socially and educationally backward classes in India (*Mehta & Billimoria, 2017*).

The Commission adopted 11 criteria, which were grouped into Social, Educational, and Economic Backwardness indicators. Economic backwardness indicators were given a weightage of 1 point each, compared to 3 points each for social and 2 points each for educational criteria (*Yadav, 2002*).

Based on an exhaustive all-India survey, the Mandal Commission identified 52% of the country's population as 'Socially and Educationally Backward Classes' (SEBCs), which are known as Other Backward Classes (OBCs) (*Mandal Commission Report, 1980; Mehta & Billimoria, 2017*). Keeping in mind the overall ceiling of 50% on reservations (*M.R. Balaji Vs. The State of Mysore; 1962*), the Commission recommended a 27% reservation in government jobs for the SEBCs. This was over and above the already existing 22.5% reservation for SCs and STs, thus taking the total percentage of the reservation to 49.5% (*Sakrikar, 2018*). The Commission, besides suggesting 27% reservation in government jobs for OBC applicants, also recommended 27% reservation in promotion in government jobs at all levels (*The Second Backward Classes Commission: Controversy of Political Move, Shodhganga, n.d.*). It also recommended de-reservation of unfilled reserved seats after being carried forward for three years (*The Second Backward Classes Commission: Controversy of Political Move, Shodhganga, n.d.*). Lastly, another key recommendation was the relaxation of age limit for OBC, as is in the case of SCs/STs (*Sakrikar, 2018*).

Surprisingly, the Commission comprised of five members, four of whom belonged to the Backward Castes, and one was from the Scheduled Castes. Unlike the First Backward Classes Commission which was broad-based, this commission's membership was exclusively from the backward classes, and there was not even a single member belonging to the non-backward classes (*Maheshwari, 1991*). Such a skewed composition of the Commission has been often criticised on several

grounds. Firstly, it violated the principle of objectivity, by having a one-sided membership and that too belonging to the target group for which the Commission was appointed (*Maheshwari, 1991*). Secondly, it potentially deprived the Mandal Commission of an opportunity to have an opposite/dissenting view from within its own ranks (*The Second Backward Classes Commission: Controversy of Political Move, Shodhganga, n.d.*). Last but not the least, the Mandal Commission lacked a broader perspective and completely ignored issues like the need for efficiency and professionalism in civil service to undertake cumbersome tasks of democracy and development (*Maheshwari, 1991*).

As a result, it can be claimed that the very composition of the Mandal Commission, was biased against the interests of the larger society, especially the non-backward classes. It neither provided a fair chance to the people of the non-backward classes to voice their concerns nor did it take into consideration the potential impact on the general classes and the systems of meritocracy while coming up with its recommendations. Subsequently, it popularly came to be known as the 'all backward commission' by critiques.

By 1980, when the Commission submitted its recommendations, the Janata Party government under Prime Minister Morarji Desai had fallen. The subsequent Congress governments under Prime Ministers Indira Gandhi and Rajiv Gandhi were reluctant to act on the Commission's Report due to its politically contentious nature. After being kept pending for over ten years, in 1990, the National Front government under Prime Minister V.P. Singh, accepted all the recommendations of the Mandal Commission and implemented them by way of executive orders. Two office memoranda, *O.M. No. 36012/13/90-Estt (SCT)* dated August 13, 1990 as amended by *O.M. No. 36012/13/90-Estt(SCT)* dated September 25, 1990 sought to enforce these recommendations (*Mehta & Billimoria, 2017*).

The government's actions sparked triggered controversy and protests all over the country, especially the Northern and Western parts of India. Schools, colleges, shops, etc. were shut down and the country witnessed massive destruction of public property by protestors. Rajiv Goswami, a 19-year old student of Delhi University, resorted to self-immolation as a protest against the acceptance and implementation of Mandal Commission recommendations by the V.P. Singh government (*Kaushika, 2015*). After this, thousands of students joined the protest, and many of them followed the footsteps of Goswami (*Pachauri & George, 2013*). However, the government did not give in at all. Despite the massive public outrage all over India, the government was fully determined to implement the Mandal Commission recommendations at any cost, largely for political gains in the form of winning a potentially huge electoral vote bank comprising of the beneficiaries of reservation, i.e. the SCs/STs, and the OBCs.

### ***Indra Sawhney Vs. Union of India (1992) – Caste & Backwardness***

During this period, the executive orders of the Central Government implementing all the recommendations of the Mandal Commission were challenged in the Hon'ble Supreme Court by the Supreme Court Bar Association, leading to the case of *Indra Sawhney Vs. Union of India (1992)*<sup>[20]</sup>. A special nine-judge bench was set up to decide upon the constitutional validity of the executive orders. After going into the merits of the case, the SC, by a 6:3 majority decision, upheld the constitutionality



and enforceability of the impugned executive laws or office memoranda, subject to certain conditions. The bench conducted a detailed analysis of precedent, the Constituent Assembly Debates, and pre-independence history. It referred to Dr. Ambedkar's speech in the Parliament at the time of the First Amendment where he had said that backward classes '*are nothing else but a collection of certain castes.*'

Based on the same rationale, a majority of the judges, in this case, said that a classification of backward classes based on caste was constitutionally permissible since '*A caste is nothing but a social class – a socially homogeneous class*' and that merely because the word 'class' is used in Article 16(4) – it cannot be concluded that it is antithetical to 'caste' (Mehta & Billimoria, 2017). Further, the majority of the bench was of the view that, given the fact that caste, occupation, poverty, and social backwardness are closely intertwined in our society, the entire caste in many cases, inevitably becomes the socially and economically backward class, relevant for the purpose (Mehta & Billimoria, 2017).

One of the judges on the bench, Justice Sawant J. had a concurring opinion which was based on recognition of the caste-occupation nexus, i.e. if a social group had hitherto been denied opportunity based on caste, then, in that case, the very foundation of remedial measures also needed to be caste-based (Mehta & Billimoria, 2017). The argument being that even though a reservation is based on 'caste', it is meant to support a class or social group which has been discriminated against historically (Mehta & Billimoria, 2017). Similarly, the concurring opinion of another judge, Justice S. Ratnavel Pandian, J. held that a determination of 'socially and educationally backward class' without the caste label would amount to ignoring that caste is a historically inseparable feature of Hindu society (Mehta & Billimoria, 2017). Thus, six out of nine judges expressed their approval to use caste as a criterion for assessment and identification of 'backward classes'.

### ***The Dissenting Opinion of Judges in Indra Sawhney Case***

However, one of the three dissenting opinions was that of Justice R.M. Sahai, who contended along similar lines as in the cases of *State of Madras v. Champakam Dorairajan* (1951), and *State of Uttar Pradesh v. Pradip Tandon* (1974). Firstly, he argued that since the Constitution uses a wider term of 'class' instead of 'caste', the basic principles of construction dictate that an interpretation assessing and recognising backwardness based on caste ought to be outrightly rejected. Secondly, empowering the State to bring in reservations under Article 16(4), based on race, religion or caste would effectively lead to damaging the very purpose and objective of Article 16(2) itself, thus falling foul of the rule of anti-discrimination on the basis of caste. Third, assessment and recognition based on caste would straightaway exclude the socially, educationally and economically weaker sections of communities such as Muslims and Christians who do not practise the caste system. He was in favour of an eligibility criteria based upon - occupation (immaterial to whether it is related to caste), social acceptability, and economic criteria (Mehta & Billimoria, 2017).

Another dissenter, Justice T.K. Thommen, although he held that the Constitution was in favour of having caste as one of the eligibility criteria, reasoned that having caste as the sole basis of reservation would violate the rule of anti-discrimination based on caste as in Article 16(2) and might result in an unjust reverse discrimination (Mehta & Billimoria, 2017).

Besides deciding upon the legal validity of usage of caste as a criterion for assessment and identification of backwardness, the Indra Sawhney judgement also ruled on various other aspects. For instance, the SC ordered the exclusion of Creamy Layer (i.e. the relatively well-off, based on income) of the OBCs from the entitlements of reservation, which is appreciable.

However, one of the weakest points of this judgement that is often pointed out is that it declared reservations for economically backward as invalid if they belonged to the so-called 'forward castes'. Thus, on the one hand, the apex court accepted caste as the sole criteria for providing reservation, which itself is debatable and on the other hand, it invalidated reservations because of warrant support to categories of persons who are 'poor'.

## **Issue of Reservations in Promotions**

Interestingly, the Supreme Court took strong objection to the reservation in promotions in government jobs, and ruled that reservations cannot be given in promotions; however, instead of stopping the practice immediately, it gave the government a five-year window to gradually eliminate reservations in promotions. However, in 1995, the Central Government, in another instance of legislative and executive overreach, made a mockery of the Constitution as well as the entire judicial and legal system, when it moved the 77<sup>th</sup> Amendment to the Constitution of India, introducing Article 16(4A), and invalidating the SC judgement on illegality of reservation in promotions, in its entirety. Under the 77<sup>th</sup> Amendment, Article 16(4A) read as follows:

"16(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State."<sup>[21]</sup>

Clearly, this is yet another instance of using legislative power for the very purpose of nullifying an SC ruling, herein the one that declared reservation in promotions as illegal. By legalising reservations in promotions, through the incorporation of Article 16(4A) as well as by extending the 5-year timeline set by the SC to do away with reservations in promotions, for an indefinite period, of time, the legislature has disrespected the apex court's power of Judicial Review accorded to it by the Constitution.

### ***S. Vinod Kumar vs. Union of India (1996)***

Taking serious note of the arbitrary nature of legislative and executive actions, which were not per the basic tenets of the Constitution as well as the disrespect shown towards judicial orders by trying to nullify them instead of implementing them, the Hon'ble Supreme Court in *S. Vinod Kumar vs. Union of India (1996)*<sup>[22]</sup> ruled that the nature of relaxations given by legislature and executive in matters relating to reservations in promotions in government jobs were not allowed under Article 16(4) of the Constitution due to the command given in Article 335 of the Constitution (*Dinesh, 2014*).

Before this judgement, the vacancies reserved for SCs/STs that remained unfilled due to non-availability of eligible candidates from the SCs or STs were treated as 'backlog vacancies', which were treated as a separate category every

year and excluded from the 50% ceiling on reservation set by the Supreme Court in *M.R. Balaji Vs. The State of Mysore (1962)* and *Indra Sawhney vs. Union of India (1992)*. Taking strong objections to these concessions and relaxations, the SC in its 1996 judgement, ruled that the number of vacancies considered for filling up in any particular year, inclusive of the backlog vacancies, were, on a combined / collective basis, subject to a cap of 50% ceiling on reservation(*Dinesh, 2014*). The government implemented this Supreme Court order in July 1997, via Office Memorandum No. 36012/2/96-Estt. (Res). Consequently, the 50% limit was then applied to both current and backlog vacancies, and special recruitment drives for filling up of backlog vacancies from reserved categories were discontinued.

However, due to its adverse effects on the reserved categories, various stakeholder pressure groups, through several MPs and MLAs, exercised political pressure on the government for protecting the interests of the SCs and STs. Subsequently, the Government of India once again exploited its legislative power by moving the *81<sup>st</sup> Constitutional Amendment Act (2000)*, which enabled the State to restore the situation to pre-August 1997 scenario, overriding clear cut and well-defined instructions given by the SC. The 81<sup>st</sup> Constitutional Amendment Act (2000) introduced Article 16(4B), which reads as follows:

“16(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.”<sup>[23]</sup>

With this amendment, the 50% clause was once again over-ridden. It therefore becomes clearly evident that both the Legislature as well as the Executive were violating the primary dictum of the Constitution, exploiting their power to maximise political gains by trying to appease the backward classes and grab their vote bank.

The SC in the case of *S. Vinod Kumar vs. Union of India (1996)* had also ordered the government to immediately withdraw the unreasonable and arbitrary relaxations on qualifying marks and evaluation standards in cases of reservations in promotions. However, once again the Constitution was amended by moving the *82<sup>nd</sup> Amendment to the Constitution (Act)* in 2000, restoring all the relaxations which had to be temporarily withdrawn due to the SC judgement(*Dinesh, 2014*).

It may be noted that the SC, in 2014, setting aside a Central government decision based on the case of *S. Vinod Kumar vs. Union of India (1996)*, declared the judgement ‘per incuriam’<sup>[24]</sup>(through or characterized by lack of due regard to the law or the facts), on the pretext that it did not take into consideration Article 16(4A) that had been brought in by the government as part of the 77<sup>th</sup> Amendment to the Constitution in 1995(*Dinesh, 2014*). This is yet another case of inter-contradictory SC judgements, in which the SC judgement of 2014 declared the 1996 SC judgement ‘per incuriam’, and ruled that it was no longer good law.

*M. Nagaraj versus Union of India (2006)*<sup>[25]</sup> was a landmark judgement delivered by the Supreme Court of India in which it ruled that it was not mandatory for the State to necessarily grant reservations in matters of promotions. In other words, it

held that reservations in promotions were strictly need-based and not a matter of rule, or a right (*Jois, 2017; Mandhani, 2017*).

Ruling on the constitutional validity of Articles 16(4A) and 16(4B), the SC held that it was the discretionary power of the State to grant reservation in promotions. However, while exercising such discretion, the State is necessarily required to support such a policy of reservation in promotions with adequate empirical data proving the backwardness of the class and also establish that representation of that class in public employment is limited, in addition to compliance with Article 335. It also held that such a reservation policy should not breach the fundamental principles laid down by previous SC judgements, such as adherence to the 50% ceiling, abstaining from obliterating the creamy layer, and extending reservation for an indefinite period (*Jois, 2017; Mandhani, 2017*). Besides, it also put the onus on the government to strictly ensure that overall administrative efficiency was not adversely affected due to the provision of reservations in promotions ('*Quota in Promotion Unconstitutional*', 2018).

Being a landmark judgement by the Supreme Court, *M. Nagaraj versus Union of India (2006)* has since been used as a precedent in many other cases by the High Courts as well by the Supreme Court itself. A recent example of this is the February 2017 SC ruling in *BK Pavitra & Ors. vs. Union of India & Ors. (2007)*<sup>[26]</sup> case, quashing the much controversial quota law of Karnataka, i.e. *Karnataka Determination of Seniority of the Government Servants Promoted based on Reservation (to the posts in the civil services of the State) Act, 2002*, terming it unconstitutional.

The Supreme Court struck down the provisions of this Act, which did away with the 'catch-up'<sup>[27]</sup> rule, providing 'consequential seniority' in reservation in promotions to all state government employees belonging to the SCs/STs. The SC further ruled that the provisions of the 2002 Act are 'ultra vires' (Latin term meaning beyond legal power or authority) to Article 14 and Article 16 of the Constitution of India, which essentially provide for 'right to equality' and 'equality of opportunity in government service' respectively ('*SC strikes down provisions*', 2017).

Contending along the lines of the Nagaraj judgement, the SC ruled that it was for the State to carry out the exercise mandated by the Nagaraj judgement and bring evidence to establish 'compelling necessity' for the practice of such power, including material concluding that such a use of power does not compromise overall administrative efficiency. However, as the Karnataka government had undertaken no such exercise, the SC struck down the provisions as unconstitutional ('*SC strikes down provisions*', 2017).

Recently, there has been a rising debate over the legality of reservations in promotions in government jobs. The Hon'ble Supreme Court recently concluded its hearings on a batch of petitions challenging its Nagaraj (2006) judgement together with the petitions challenging reservations in promotions. The major issues that were up for scrutiny include – whether the 'creamy layer' concept which is applied to OBCs to exclude the affluent amongst them from enjoying the gains from reservation, should be extended to Scheduled Castes (SCs) and Scheduled Tribes (STs), and whether reservations in promotions are constitutionally permissible or not ('*SC/ST job promotion quota*', 2018).

In its unanimous judgement dated September 26, 2018, given by a five-judge bench headed by the then Chief Justice of India (CJI) Dipak Misra, the Supreme

Court gave three key points. Firstly, it rejected the appeal seeking to refer its 2006 Nagaraj judgement to a seven-judge bench for reconsideration (Mahapatra, 2018). Secondly, it overturned an important aspect of the Nagaraj judgement by ruling that the Government of India need not collect quantifiable data on the backwardness of SCs/STs to justify giving reservations in promotions (Mahapatra, 2018). However, the Bench held as correct the other two conditions laid down by the Nagaraj judgement, which required the government to provide quantifiable data justifying the inadequate representation of the particular class in government jobs (which was being handed out reservations in promotions), while simultaneously also ensuring that such reservations in promotion did not hamper with the overall administrative efficiency (Mahapatra, 2018). Thirdly, and most importantly, the Bench also extended the concept of 'creamy layer exclusion' which was till now applicable only to the OBCs, to the SCs and STs as well (Mahapatra, 2018).

While overruling the first condition laid down by the Nagaraj judgement, the Hon'ble Supreme Court unanimously held the view that the SCs and STs are assumed to be backward and that their backwardness has been recognised as inherent to them under statutory provisions. Hence they are, by default, permitted to be included in the list of scheduled communities under the Presidential Order to receive the benefits of reservation (Mahapatra, 2018). Although this diluted the Nagaraj judgement by making it easier for the government to provide reservations in promotions, the extension of the 'creamy layer exclusion' principle from the OBCs to the SCs and STs was path-breaking. It has been done to deny the 'elite' among the underprivileged communities from not only OBCs but also from the SCs and STs from enjoying the benefits of reservation (Mahapatra, 2018).

In this recent judgement, it would be interesting to discuss some of the legal arguments that the lawyers from both sides had presented to the Hon'ble Supreme Court in this context. Seeking reconsideration of the Nagaraj judgement, senior counsel Indira Jaising, who appeared on behalf of a body of SC/ST government employees had argued that Constitutional provisions could be tested on the grounds of 'compelling reasons - backwardness, inadequacy of representation and overall administrative efficiency' ('Quota in Promotion Unconstitutional', 2018). Besides, the Centre and States had also argued that the concept of 'creamy layer' did not apply to SCs/STs, reasoning that the constitutional scheme itself implies that backwardness is 'implicit' in these castes, and the very fact that these communities are notified as SCs/STs was a sufficient ground to conclude their backwardness and thus did not require quantifiable data ('Does great-grandson of IAS officer needs quota', 2018).

A significant argument against reservations in promotions given by senior counsel Shanti Bhushan was that the concept of reservation applies only to a class of people who are backward and not to an individual occupying a government position ('Quota in Promotion Unconstitutional', 2018). Once a person becomes a Collector or an Income Tax officer, he/she ceases to be backward ('Quota in Promotion Unconstitutional', 2018). While reservations at entry level would be meant for a 'class of backward people', once a person occupies a position in a government job, any further reservation handed out to him/her in matters of promotion would amount to providing reservations to the individual and not the class ('Quota in Promotion Unconstitutional', 2018). Along similar lines, senior advocate Rakesh Dwivedi had also argued that the very presumption of

backwardness of SCs/STs ‘vanishes’ once they join government service(‘SC/ST job promotion quota’, 2018).

In fact, during hearings, the five-judge bench hearing the case had also questioned the petitioners arguing in favour of reservation in promotion, along similar grounds. If a person becomes the Chief Secretary of a State, the bench argued, will it be logical to treat his/her family members as backwards to provide reservation in the promotion which would lead to accelerated seniority?(‘Does great-grandson of IAS officer need quota’, 2018)

In our view, reservations in promotions are against the widely accepted principle of merit-based awards. Hence, as a step forward, it is high time for policymakers to at least do away with Reservations in Promotion, even if caste-based reservations remain part of the Indian welfare state.

## **Ninth Schedule – A Constitutional Support to Weaken the Constitution Itself**

Another unusual instance of legislative and executive breach of power in Indian history is the *Ninth Schedule* of the Indian Constitution that has remained legally controversial. It was a novel measure initiated by the first Prime Minister of independent India, Pt. Jawaharlal Nehru, who was dismayed at the delays due to judicial intervention in passing land reform laws to tackle the century-old oppressive Zamindari system that had been prevalent in India since centuries (Prasad, 2017). He had proposed creating the Ninth Schedule to pass and park-specific relevant laws under this, making them judicially immune and outside the purview of judicial scrutiny (Prasad, 2017). The primary objective at that time was to push for speedy reforms.

To successfully proceed with the agenda of land reforms and redistributive property measures, he brought in the Ninth Schedule as a part of the First Amendment to the Constitution in 1951, adding to the existing eight Schedules. Article 31(B), which was also added, exempted any acts or laws of the Government of India under the Ninth Schedule, from being open to judicial review, in their entirety. Articles 31(A) and 31(B), both of which were introduced under the First Amendment, gave absolute legislative and executive power to the Parliament and the ruling government over making laws under the Ninth Schedule. This meant that any laws dumped into the Ninth Schedule or executive orders implemented in the exercise of power under the Ninth Schedule were completely ‘immune’ from being struck down by the HCs or the SC, even if they violated the fundamental rights of citizens as guaranteed under the Constitution. Landlords had long been challenging executive orders regarding land reforms in the HCs and SC because they violated their Fundamental Right to own land (Prasad, 2017).

Although originally brought in for a specific purpose, which was the need of the hour, the Ninth Schedule has been often misused to provide judicial immunity to all kinds of laws (Prasad, 2017). A blatant example is the case of 69% reservation in Tamil Nadu. In 1993, the Madras HC struck down then Chief Minister Jayalalitha’s controversial reservation policy to comply with the SC judgments in the cases of *M.R. Balaji Vs. The State of Mysore* (1962) and *Indra Sawhney vs. Union of India* (1992), which had placed a ceiling of 50% on the allowed limit of

reservation(Prasad, 2017). Despite that, the Legislative Assembly of Tamil Nadu passed a bill to implement 69% reservations(Prasad, 2017).

At the same time, in 1991, the AIADMK and Indian National Congress coalition had a massive victory in Tamil Nadu state elections wherein the coalition won 225 out of the 234 seats and also won in all 39 constituencies at the Centre, largely because of the prevailing sympathy wave arising out of the much recent assassination of Rajiv Gandhi at that time (Janakiraman, n.d.; 'Statistical Report on General Elections, 1991', 1992). Subsequently, owing to the dominant political alliance between the AIADMK and the Indian National Congress, Jayalalitha exercised her political influence at the Centre and got the reservation bill parked into the 'politically lucrative' Ninth Schedule, by the passage of 76<sup>th</sup> Constitutional Amendment, through Parliament (Prasad, 2017). Consequently, the 69% reservation policy of Tamil Nadu came to be outside the jurisdiction of judicial review.

While the 76<sup>th</sup> Amendment was to accommodate Tamil Nadu's 69% reservations, what took the cake was the 78th Amendment by the Government of India, which not only provided for immunity to legislations and executive orders in the Ninth Schedule but also immunised all sorts of amendments to those legislations and laws.

However, there awaits an interesting judicial catch here – the historic Supreme Court judgement in *Keshavananda Bharati vs. State of Kerala* (1973), wherein a 13-judge Constitutional Bench ruled by 7:6 majority that Parliament's power to amend the Constitution was limited to not altering or modifying what is called the 'basic structure' of the Constitution (Billimoria & Sagar, 2017). It held that the Constitution possesses a basic structure or framework and Article 368 does not empower the Parliament to either destroy or tamper with it, under any circumstances (Billimoria & Sagar, 2017). Further, reviewing the 25<sup>th</sup> Amendment to the Constitution of India (1971) which curtailed the right to property by expanding the power of Government of India to acquire private property, it struck down the provision which denied the possibility of judicial review to any law that that sought to implement Directive Principles(Billimoria & Sagar, 2017). As a result, effective from April 24, 1973, the date of the Keshavananda (1973) judgement, all Constitutional Amendments are, in principle, liable to be challenged in Constitutional Courts and declared invalid if found to be against the basic structure' of the Constitution.

Interestingly, the definition of the 'basic structure' of the Constitution has been left open to the interpretation of the Constitutional Courts by the Keshavananda (1973) judgement. Consequently, the Keshavananda (1973) judgement has since proved to be a major turning point in strengthening the role of the Indian Judiciary as an institution by vesting them with the discretionary power to interpret and decide from time to time as to what comprises of the 'basic structure' of the Constitution. This is evident from the fact that Keshavananda (1973) has since been used as a precedent in several court cases especially those challenging Constitutional Amendments. An initial instance of this was when the Parliament passed the 42<sup>nd</sup> Amendment to the Constitution in 1971, which granted the Parliament unrestricted powers to amend any parts of the Constitution, without being subjected to 'judicial review'. This amendment was struck down by the SC in *Minerva Mills vs. Union*

of India (1980)<sup>[28]</sup> on the ground that judicial review of legislative and executive actions (including Constitutional Amendments), and constraints on the power of Parliament to amend the Constitution are themselves part of the basic structure of the Constitution (*Billimoria & Sagar, 2017*). The most important observation of the SC was that since the Parliament enjoys only 'limited amending power' under the Constitution, hence it cannot enlarge that much power into absolute power.

Keshavananda (1973) has also been used as a judicial precedent specifically concerning the Ninth Schedule. For instance, in *Waman Rao vs. Union of India (1980)*<sup>[29]</sup>, the SC reiterated and applied the 'basic structure' doctrine by using Keshavananda (1973) as a precedent to conclude that any Constitutional Amendments, including those made to the Ninth Schedule on or after April 24, 1973, would be upheld only if they do not damage or destroy the basic structure of the Constitution. Further, in *IR Coelho vs. State Of Tamil Nadu (2007)*<sup>[30]</sup>, the SC once again used Keshavananda (1973) as a judicial precedent to specifically reiterate that any Constitutional Amendments to the Ninth Schedule on or after April 24, 1973, are open to challenge in the Courts of Law and can be invalidated by exercise of the power of judicial review by the Hon'ble Supreme Court or the High Court(s), when in violation of the 'basic structure' doctrine.

For years, successive Central and State governments have been using the *Ninth Schedule* as a junkyard to park all their laws which they expect, could attract invalidation and being struck down as unconstitutional by the judiciary.

However, despite this, as far as the reservation is concerned, there are currently two states in India, that continue to have more than 50% reservation, namely Tamil Nadu (69%) and Maharashtra (52%) (*Ashraf, 2017*). What is even more shocking is that Tamil Nadu has in place 69% reservation, that too without the exclusion of the creamy layer, which is contrary to the SC judgement of 1992 in *Indra Sawhney vs. Union of India (Radhakrishnan, 2011)*. This way, Tamil Nadu has been setting a unique precedent of reservation since 1985, when its excessive quota regime started. It has been able to do so because it was successful in getting the Tamil Nadu Reservation Act (1993) that was passed by the State legislative assembly, included under the Ninth Schedule in the Constitution of India.

Moreover, the SC judgement of 1992, itself made exceptions to the 50% rule in case of extraordinary circumstances prevailing in some states (*Prasad, 2017*). Although the SC had said that any State implementing more than 50% reservation would have to portray and justify its extraordinary need to do so, while also proving lack of alternatives, the Tamil Nadu government for more than three decades has easily misused this leniency given by the apex court. This has helped AIADMK to stay in power in Tamil Nadu, in spite of the presence of a tough political opponent i.e. the DMK. The credit for such a Reservation policy can be attributed to Jayalalitha and until her death in 2016, she was Chief Minister for nearly fourteen years during 1991 – 2016. However, it should be noted that these laws in the two states – Tamil Nadu and Maharashtra, may be challenged in the Hon'ble Supreme Court or the High Court(s) and sought to be invalidated.

## Reservation for Jats

In 2014, the then-ruling UPA government at the Centre, by way of a March 2014 notification, extended reservation in government jobs and education to the



Jat community, by including it under the central list of Other Backward Classes (OBCs) in Haryana, Bihar, Gujarat, Himachal Pradesh, and the National Capital Territory of Delhi, Rajasthan, Uttarakhand, and Uttar Pradesh (Apoorva, Anuja, & Verma, 2015).

Surprisingly, this notification was issued by the UPA government on March 4, 2014, a day before the Model Code of Conduct for the Lok Sabha elections of 2014 came into effect; the ruling UPA was attempting a policy for appeasing the Jat community, trying to garner votes for itself in the National Election (*'Supreme Court scraps reservation for Jats'*, 2015).

However, soon after, in 2015, the Hon'ble Supreme Court scrapped the Centre's notification to include Jats in the OBC Category in 9 states. Interestingly, the apex court, in contrast to many of its previous judgements, especially the Indra Sawhney case of 1992, ruled that 'caste' and 'historical injustice' cannot blind a state in the process of handing out backward status to a community.

Laying down new criteria for the identification of backward classes, the apex court redefined the concept of affirmative action by the State and obligated the State 'to reach out to the most deserving' class. As an example, it asked the Centre to explore the possibility of including new emerging groups like transgender as a part of backward classes, and hence, extending the benefits of quota-based reservation to them (Anand, 2015).

*'An affirmative action policy that keeps in mind only historical injustice would certainly result in under-protection of the most deserving backward class of citizens, which is constitutionally mandated. It is the identification of these new emerging groups that must engage the attention of the state,'* the bench of Justices Ranjan Gogoi and Rohinton F. Nariman said (Anand, 2015).

In our opinion, it was a well-drafted and precisely-worded landmark judgement of the Hon'ble Supreme Court. The judgement acknowledged that even though there may be even more progressive reservation systems possible, caste-based reservation system can also help in achieving the 'textual goal' of reservation, i.e. upliftment of the socially and educationally backward classes, provided it is implemented by connecting reservation to the needy and most deserving backward castes.

However, the current manner in which reservation continues to be implemented, is regressive in nature, due to several unreasonable provisions discussed earlier in this paper, for example, reservation exceeding 50%, or non-exclusion of 'creamy layer' of OBCs from grabbing the benefits of reservation and referring to its landmark judgement in declaring the third gender as a socially and educationally backward class of citizens, the apex court itself said that its judgement was focussed upon being a pathfinder (Anand, 2015).

## **Reservation for Economically Weaker Sections (EWS): A Turning Point from the Indra Sawhney Judgement of 1992?**

Interestingly, in January 2019, the Narendra Modi led NDA government surprised the people of India by announcing plans to introduce reservations for the economically weaker sections (EWS) of society. The announcement was made on 7<sup>th</sup> January, 2019, when the Union Cabinet gave its nod for a Constitutional Amendment in this regard (Mahajan, 2019). On 8<sup>th</sup> January, 2019, the 124<sup>th</sup>

Constitutional Amendment Bill was introduced in Lok Sabha (Lower House of Parliament) and was approved by more than two-thirds majority. On 9<sup>th</sup> January, 2019, the Rajya Sabha (Upper House of Parliament) also approved the Constitutional Amendment by more than two-thirds majority (*Das, 2019*). It was one of the most notable and historical events in the history of the Indian Parliament wherein a Constitutional Amendment (103<sup>rd</sup> Constitutional Amendment Act) was introduced in such a hurry and approved by both houses of the Parliament within two days. It received the President's assent on 12<sup>th</sup> January, 2019 (*Nair, 2019; Nivedita, 2019*). The 103<sup>rd</sup> Constitutional Amendment Act amended Article 15 by inserting a new clause, viz. clause (6) as follows:

“(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making –

- (a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and
- (b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category”<sup>[31]</sup>

Further, the Constitutional Amendment also amended Article 16 by inserting a new clause, viz. clause (6) as follows:

“(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.”<sup>[32]</sup>

Article 15(6) empowers the State to offer reservations to the ‘economically weaker sections’ of society in gaining admission to educational institutions, including public and private institutions (both aided and unaided) except minority institutions. Further, Article 16(6) gives the State powers to provide EWS reservations in matters of public employment as well. It should also be noted that these provisions of EWS reservations, if implemented, are over and above the existing reservations for SCs, STs, and OBCs and are subject to a maximum of 10%. The qualifying criteria for ‘economically weaker sections’ shall be revised by the State, based on family income and other such economic indicators. The current income criterion has been set such that persons having an annual family income below ₹8 Lakhs will be eligible for availing EWS reservations (Family will include parents, spouse, children, and siblings less than 18 years) (*Economic Reservation: Centre Issues Instructions*, 2019).

This Constitutional Amendment effectively removed the underlying legal hurdles and paved the way for the government to provide 10% reservations in higher education and government jobs to the ‘economically weaker sections’ of the society. It is because in *Indra Sawhney* (1992), the Supreme Court had struck

down the reservations for economically weaker sections belonging to the 'forward castes' on the ground that the Constitution of India had no provision for providing reservations on economic criteria. This was in fact, to some extent, true as well, since the Constitution so far only had reservation provisions for the 'socially and educationally backward' sections of society.

It has taken nearly 27 years for the Parliament to come up with a valid law to further the benefits of reservation to all who live under the hardships of 'poverty'. Some experts and political leaders have already argued that this Constitutional Amendment, as well as the government's Executive Orders implementing the 10% reservations for EWS category under the shield of this amendment, are likely to be challenged and removed by the Supreme Court as it violates with the *Indra Sawhney* (1992) judgement. However, the amendments can withstand judicial scrutiny. The reason for this is that the basis for striking down EWS reservations by *Indra Sawhney* (1992) was that the Constitution at that time did not have any provisions for extending the benefits of reservations to the 'economically weaker' classes of citizens. However, by approving the 103<sup>rd</sup> Amendment to the Constitution, the Parliament has effectively created the very 'basis' for extending the benefits of reservation to the economically weaker sections.

However, with the existing reservations at 49.5% (OBC – 27%, SC/ST – 22.5%), the implementation of EWS reservations takes the total reservations to 59.5% which exceeds the 50% ceiling on total reservations placed by *M.R. Balaji Vs. The State of Mysore* (1962) and *Indra Sawhney vs. Union of India* (1992). Even though *Indra Sawhney* (1992) had allowed reservations exceeding the 50% cap, but it was strictly conditional on the exceptional nature of circumstances. Further, such an extent of reservations, on caste and EWS grounds, raises a huge question mark on the existence of systems of meritocracy and efficiency in educational institutions and government jobs. In fact, it also poses a bigger question: In trying to provide better opportunities to the backward classes which were historically the victims of social discrimination and injustice, has India's Reservation System done injustice to the worthy but not backward citizens of India by violating the principle of Equality of Opportunity and discriminating against them merely because they do not belong to the backward classes? Are the recent EWS reservations an attempt to balance the harm caused to the economically weaker classes from the general population because they have missed the benefits of reservation despite being needy of them? OR Will further reservation be a harbinger of further loss of merit?

## **Conclusion**

We thoroughly understand and appreciate that reservation is not only a sensitive issue but also has a critical role to play in achieving the key objectives in a democratic state seeking to promote the welfare of its people. Our premise, through this paper, is not against reservation per se. Reservations on economic grounds can be a feasible, quick way to manage the extreme inequalities in the world's largest democracy. It can be a way to tackle disparities built over centuries due to social, cultural, political or geographic reasons. To address exploitation in the society due to caste discrimination may need legislation, development, and cultural & political movements; but to reduce economic inequalities, the criterion should be

economical. Reservations according to caste in economic activities should not be based on correcting centuries-old oppression; instead, they should focus on correcting present problems of hunger, poverty, and deprivation. We believe that this focus would yield faster results in improving the conditions for 29.22% (as of 2013) of the world's poor (Roser & Ospina, 2013).

Serving as a threat to the dream of unified India, the reservation debate has taken on a strong casteist flavour, leading to strong disintegration within the country. In a democracy, political gains are often found to be the guiding force towards decision making, and undoubtedly the subject of reservation has played a significant role in vote bank politics. Our objective is to highlight such facts and back them up with arguments to convey how India's Reservation Policy has journeyed, often in violation of the sanctity of the Constitution and changing judicial rulings.

The most recent 103rd Amendment to the Constitution for the inclusion of EWS criteria in reservation appears, at first glance, to address the problem of poverty and backwardness in a 'fair' manner, but we should also note the context of the timing of this amendment. This amendment has come just a few months before the National Elections in the country. While this appears to be a welcome measure, nevertheless we do think that there is a need to take a holistic perspective on all categories of reservations, before we reach a situation that reservation has almost wholly eroded merit and performance in the institutions of the Indian State.

## Endnotes

- [1], [2], [5], [7], [8], [9], [10], [11], [13], [19], [20], [22], [25], [26], [28], [29], [30] – Copies of these judgements have been taken from <https://indiankanoon.org>
- [3], [4], [6], [14], [15], [16], [17], [18] – Quoted directly from The Constitution of India, 1950, (Up-to-date with the Ninety-fourth Amendment Act, 2006) taken from the National Portal of India. Available at <https://www.india.gov.in/my-government/constitution-india/constitution-india-full-text>
- [12] – 'Strength' of a bench means the number of judges on that bench
- [21] – Quoted directly from The Constitution (Seventy-Seventh Amendment) Act, 1995 taken from the National Portal of India. Available at <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-eighty-first-amendment-act-2000>
- [18] – Quoted directly from The Constitution (Eighty-First Amendment) Act, 2000 taken from the National Portal of India. Available at <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-seventy-seventh-amendment-act-1995>
- [24] – 'Per incuriam' is a Latin term meaning 'through lack of care'. A previous court judgement declared 'per incuriam' means that it has been found to have failed to take into due consideration one or more relevant statutory provision(s) or judicial precedent(s) while arriving at the final judgement and hence such a judgement ceases to be a 'good law' and no longer needs to be followed as a judicial precedent by courts in future.
- [27] – The 'Catch up' rule means that if a senior candidate from the General category is promoted after the promotion of SC/ST candidates, he/she would

regain his/her seniority in promotion over the juniors promoted ahead of him under the reserved vacancies ('*SC strikes down provisions*', 2017).

[31], [32] –Quoted directly from The Constitution (One Hundred and Third Amendment) Act, 2019 published by The Gazette of India (12<sup>th</sup> January, 2019)

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**Institute of Public Enterprise (IPE)**, Hyderabad, is a non-profit educational society devoted to Education, Training, Research and Consultancy for business enterprises in public and private sectors. IPE is a premier B-School and is recognised as a 'Centre of Excellence' by the Indian Council of Social Science Research (ICSSR), Ministry of HRD, Government of India, for doctoral studies. It is also recognised by nine universities

for guidance of PhD scholars. It has developed strong links with industry and academic institutions and is the founder member of the Association of Indian Management Schools (AIMS).

IPE strongly believes that HR development including education is crucial for economic growth. As part of its long-term education programme, the Institute runs an AICTE-approved PG Diploma in Business Management, which is also recognised as equivalent to MBA by the Association of Indian Universities (AIU). Added to it, the Institute offers MBA in Public Enterprise for practicing managers in collaboration with Osmania University. With the changing needs of the industry, the Institute also runs sector-specific PGDM programs in Marketing Management, Banking, Insurance and Financial Services, International Business and Human Resource Management. IPE also offers a 15 month Exe-PGDM program for Executives.

The Institute has a strong research wing with a number of research scholars, sponsored by ICSSR and IPE, working on topics of current interest. Its PhD programme is one of the largest in social sciences. Research, both basic and applied, is the forte of the Institute and helps it in its training and educational activities. IPE's research studies are extensively used by the Committee on Public Undertakings (COPU), other Legislative and Government Committees, the Economic Advisory Council to the Prime Minister, several Ministries of the Government of India, Planning Commission, Standing Committee on Public Enterprises (SCOPE) and several Finance & Pay Commissions.

Apart from Journal of Governance & Public Policy, IPE also publishes six other journals titled:

- The Journal of Institute of Public Enterprise
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The Institute of Public Enterprise (IPE) was established in 1964 as an autonomous non-profit society with the objective of furthering studies, research and consultancy in Management Sciences. IPE functions under the aegis of Indian Council of Social Sciences Research, Ministry of HRD, Govt of India.

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#### FROM DIRECTOR'S DESK



Prof RK Mishra

The management education at IPE provides an opportunity to the PGDM students to access integrated knowledge of practice and theory of management. Born out of our five decade experience in conducting management development programmes, management research, problem-solving consultancies and international publications, students at IPE get connected to the myriad stakeholders. Once placed, they present themselves as the most suitable candidates to understand and serve the needs of organizations resulting in high value addition for the businesses and the society. Management Education at IPE goes beyond aspiring for a career. The management students through the case study based curriculum, continuous interaction with fellow students, access to faculty and availability of top class infrastructure inculcate values and aspirations which drive them with hope and courage to make their lives a pleasant and delightful experience. We impart futuristic vision to prepare our students to meet future challenges.

#### RESEARCH AT IPE

IPE strongly believes in conducting 'usable' and 'meaningful' research and thereby, Research at IPE is primarily devoted to provide inputs to policies and decisions. Research is carried out to enhance the existing body of knowledge in the fields of management and social sciences. Encompassing both institutional and sponsored research, IPE's research thrust is based on priorities indicated by policy makers, end-users and its own faculty. As a 'Centre of Excellence in Research' recognized by the ICSSR, MHRD, Govt, about 200 research projects and consultancy assignments have been successfully completed by the Institute.

IPE's research links exist with a number of national and international universities and agencies including the UNDP, ADB, IDRC and OECD. The Institute publishes six in-house journals apart from the Journal on Corporate Governance published by SAGE\*. IPE's doctoral programme, under the aegis of ICSSR, has produced so far 75 Ph.Ds. Currently 30 research scholars are working for their PhDs in Social Sciences and Management studies. ICSSR, MHRD, Govt has instituted 10 fellowships for pursuing doctoral work at IPE.

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#### MDPs

IPE has become well known for its quality of Management Development Programmes, workshops, training programs and customized organization-based programmes. IPE offers open programmes, theme based MDPs and faculty specialization oriented training programmes bringing industry, government and organizations closer to the frontiers of knowledge that could add value to their activities. Over the years, IPE has developed infrastructure and facilities suited to impart training and MDPs for the different echelons of executives in the public and private sector enterprises, government, and third sector of economy. IPE so far conducted over 100 MDPs for nearly 2000 IAS / IFS / IPS officers and other government officials, as well as 650 MDPs (including in-company programmes) for over 40,000 practicing managers of the corporate sector. The Institute has also conducted several seminars, conferences and other programmes sponsored by various national and international organizations.

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Customer Relationship Management - Road to Profitability	Nov 21-22, 2019
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Personal Growth for Workplace Effectiveness	Nov 21-22, 2019
Digital and Social Media Marketing	Dec 5-6, 2019
e-Procurement System	Dec 11 & 13, 2019
Foreign Currency Risk Management and Global Finance	Dec 13-14, 2019
Communication for Managerial Effectiveness	Feb 4-5, 2020
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For details visit [www.ipeindia.org](http://www.ipeindia.org) Tollfree: 1800-120-4473 Contact: 9391932129 Email: [admissions@ipeindia.org](mailto:admissions@ipeindia.org)