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Detecting Language Crime: Online libel in the Philippines

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Abstract
With the recent passage of the Cybercrime Prevention Act in the Philippines, a lot has been said on its impact in the country. One of the most debatable provisions of the said law is online libel which many are still questioning despite being upheld by the Supreme Court of the Philippines as constitutional. Critics of the law, with regard to said provision, claim that it curtails the constitutional right of the Filipinos to freedom of speech and expression especially that Filipinos are amongst the world’s digital natives, particularly through the use of social media. Mostly, the threat on the rights of the Filipinos lies on the elements of the said crimes wherein most of these elements are subject to different interpretations. These are supposedly the determining factors on whether they violated the law or not. For example, in particular cases, elements of online libel demands more than what the law depicts - the use of language plays a major part. It requires understanding beyond the law itself, the language use as highlighted in the study of semantics and pragmatics, and the society where it was uttered. Thus, this study explores on the need of interconnecting this academic and technological revolution pertaining to the use of forensic linguistics in solving this language crime.

I. Introduction
Language is commonly defined as a system of communication, a tool for thought, and a medium for self-expression. A language consists of all the sounds, words, and infinitely many possible sentences. Thus, when you know a language, you know the sounds, the words, and the rules for their combination. Language is at the heart of all things human and we use it when we are talking, thinking, reading, writing, and listening. It is part of the social structure of our communities and forges the emotional bond between children and parents, as well as it serves as the vehicle for literature and poetry. Language is not just a part of us, instead it defines us. Everyone uses language to express oneself - views, feelings, emotions, wants and aspirations and be heard by others. Throughout the ages the use of language evolved. From our ancestors who may have used monosyllabic words, mere movements or signs to refer to things up to the most complicated combination of sounds producing words or symbols that were found in caves or stones then evolved to the most technologically advanced means, language usage continues to develop as the lifestyle of the people changes.

We cannot deny the fact that in the 21st century, language and linguistic evolution intensely progresses. With everything that is just like a click away because of the internet, language expressions and forms develop alongside. Different jargons emerge and manner of exchanges of thoughts extends to different media. Existence of emails, Google plus, or social media like Friendster, Multiply, Facebook, Twitter and Youtube among others are evidences how people now connect with one another. However, despite these advancements, one thing remained constant. Language in whatever form or means is used freely by individuals to communicate or express oneself to the world. However, a recent development in the legal system in the Philippines is believed to pose a threat to a right protected by its own Constitution, the epitome of the Filipino’s aspirations and hope, as well as the United Nations’ -- the right to freedom of expression. In 2012, Republic Act 10175 also known as the Cybercrime Prevention Act which punishes offenses like cybersquatting, cybersex, child pornography, identity theft, illegal access to data and online libel was passed in the Philippines. Many Filipinos criticized the law specifically on the provision of online libel as it curtails the above-mentioned right. While there is a global trend in decriminalizing libel, the law even imposed a stricter penalty for those who committed the crime through the internet. Series of petitions for its revision, if not abolition, were filed. But in February 2014, the Supreme Court of the Philippines ruled in favor of the constitutionality of the provisions of online libel.

Now that the law is in full effect, there is a need for studies related to the language crime of online libel as well as one of its related aspect like cyberbullying. Online libel is alleged to be a threat on the use of the internet specifically on social media in the Philippines, which is dubbed as the “Social Media Capital of the World”. This study then looked on possible ways on how Filipino social media users can deal with that particular provision of the law since it is, as of the moment, fully operational in the country. It is believed that the analysis

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of the elements of the said language crime can be very helpful to Filipino “netizens” to avoid being accused or held liable of such offense.

This paper premised that knowing the provisions of the law is not enough to detect it. Boundaries must be broken and interdisciplinary studies are necessary in order to fully comprehend whether certain “post” violates the law. The interplay of the different fields such as Anthropology, Sociology, Linguistics and Law (ASLL) through surveying of texts and cases played a major part to understanding the relationship of freedom of expression and the defamation law. In addition, popular incidents in the Philippines which gave rise to alleged cyber bullying or online libel were examined to demonstrate the application of the interaction of these disciplines in detection of the crime.

II. Freedom of expression, new media and the laws in the Philippines

Media is surely anything associated with film, television, radio, magazines and newspapers and since the media intervene in and across the social, political, cultural and personal dimensions of life – are thus central to the understanding of how local and international societies operate in the twenty-first century. However, in this year and age of new media that people feel the need to connect with other people, they resort to use the internet. This resulted to having two of the biggest developments in terms of digital connections for the past two decades, namely social media and social networking. Social media is defined as the media that people create when they connect with each other and share content online such as the best-known Youtube and Flickr. Meanwhile, social networking works on the same sharing principle as social media, since people use digital tools to connect and network with each other and the most popular ones in 2010 were Facebook, MySpace, Orkut, LinkedIn and Twitter.

In the case of the Philippines, social networking is one of the most popular web-based activities wherein Filipinos are very active in using a range of social network sites such as Facebook and Multiply. In fact, the Philippines was declared as the “Social Media Capital of the World” by the report of the Universal McCann in 2008 entitled “Power to The People: Wave3”. It was noted that 83 percent of the Filipinos surveyed are members of social media. The popularity of social networking in the Philippines can be associated with a key aspect of Filipino culture that can be encapsulated as “friends help friends” and that attitude are said to have spilled over cyber-culture. It is also notable that in the Philippines, social networks are not just being utilized by ordinary people, but even politicians use it for election campaigns and the police use it as a tool for criminal investigations.

Moreover, another important use of social media in the country is to maintain relations with geographically distant families and friends. This phenomenon can be interpreted in interpersonal and subjective terms rather than political terms. However, the personal and the political dichotomy, in the case of the Philippines, cannot be easily bifurcated, and the deployment of Social Networking Sites (SNS) in the context of intimacy is inseparable from the politics of globalization.

Social media is one of the forms which Filipinos express themselves freely. It is one of the ways by which our countrymen exercise a right which the Philippine Constitution as well as United Nations protects which is freedom of expression.

The relationship of the freedom of expression and the laws in the Philippines can be viewed in many ways. There are provisions wherein the right is the very reason of the existence of certain laws imposed in the country on the other hand there are provisions limiting the exercise of such right. Pertinent provisions in the Philippine laws connected to such right are the following:

A. 1987 Philippine Constitution

Section 4. “No law shall be passed abridging the freedom of speech, of expression and of the press and the right of people to peaceably assemble to petition the government for the redress of grievances.”

B. The Revised Penal Code of the Philippines

Art. 353. Definition of Libel. Libel is defined “as a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance tending to cause dishonest, discredit or contempt of a natural or juridical person, or to blacken the memory of one who is dead.” In libel, publication is a requirement, which must be in writing or similar means. On the other hand, slander constitutes oral defamation under Article 358 of the Revised Penal Code. Libel and slander are punishable by imprisonment (prison correccional).

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3 Supra, p.2
Art. 354. Requirement for publicity. — Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:
1. A private communication made by any person to another in the performance of any legal, moral or social duty; and
2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

Art. 355. Libel means by writings or similar means. — A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by prision correccional in its minimum and medium periods or a fine ranging from 200 to 6,000 pesos, or both, in addition to the civil action which may be brought by the offended party.

C. Cybercrime Prevention Act of the Philippines (Republic Act 10175)

The recent law specifically the provision on online libel was declared constitutional by the Supreme Court of the Philippines in February 2014.

SEC. 4. Cybercrime Offenses. — The following acts constitute the offense of cybercrime punishable under this Act:

(4) Libel. — The unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future.

D. New Civil Code of the Philippines

The following provision is also known as the principle of abuse of rights. This provision set the standard which one should observe in exercising their rights as one who is granted a right cannot use the latter without observing the responsibility imposed together with it.

Section 19. Every person must, in the exercise of his rights, and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

III. Detecting Language Crime: Online Libel in the Philippines

Language crimes are crimes which mere writing or uttering of specific words is sufficient to be considered as offenses having criminal intent and in which language is the major source of incrimination unless the contrary is proved. 7

Just like in other countries, these kinds of crimes exist in the Philippines such as bribery, slander, and libel with the latter having been expanded to include those published online as a result of the new technology which is the subject of this paper.

The development of different applications and programs in the internet such as social media paved way to other medium by which Filipinos can communicate their opinions, insights and views. At the same time, these programs expanded the means by which the language crime of libel is committed. With the trending culture that a person can share everything in just a click away, more Filipinos resort to social media to freely express themselves. However, some people believe that the power of free expression through social media is too much for them to handle as they may receive comments or statements which are not pleasing to them. This dichotomy now gives rise to the possible case of online libel.

In the Philippines, one tends to file a case for libel or slander when he/she feels that certain words are published or uttered to defame him or her, or sometimes words are just too harsh or insulting to the point of attacking ones person (commonly termed in the Philippines “yurakan ang pagkatao”). Especially now that many Filipinos have at least one social media account where they can speak their mind freely, it must be stressed that words which are merely insulting are not actionable as libel or slander per se and mere words of general abuse however opprobrious, ill-natured or vexatious whether written or spoken, do not constitute a basis for an action for defamation for special damage. The fact that the language is offensive to the plaintiff does not make it actionable itself. 8

So what constitutes the case of online libel? How do you identify if a statement is libelous or how can one avoid being accused of such?

7 Detecting Language Crime: the possible contribution of forensic linguistics, a talk by Dr. Basim Jasim, 08-26-2011, 15:00.).
To detect the said language crime, an analysis of its elements is important. The provision of online libel gave reference to the crime of libel from the Revised Penal Code thus the elements in the latter law were considered as:

a. The imputation must be defamatory;

b. The imputation must be made publicly (through internet such as social media, etc);

c. The imputation must be malicious; and

d. The person defamed must be identifiable.

As we cannot neglect the fact that language plays a vital role in proving whether there is a crime involved in such cases or none, linguistic interpretations such as syntactic structures, semantics, pragmatics, and even discourse analysis are deemed necessary in order to understand further the elements. In addition, key aspects in Anthropology and Sociology are used in order to evaluate the presence or absence of the elements.

In studying syntactic structures, we deal with the study of the relationships between linguistic forms, how they are arranged in sequence, and which sequences are well-formed (grammatically correct) and this type of study generally takes place without considering any world of reference or any user of the forms. While when we involve semantics, we then observe the relationships between linguistic forms and the entities of this world; that is, how words literally connect to things. Then, semantic analysis attempts to establish the relationships between verbal descriptions and states of affairs in the world as accurate (true) or not, regardless of who produces that description. Furthermore, in most cases, we have to involve pragmatics wherein we look at the relationships between linguistic forms and the users of those forms. In pragmatics, we allow humans to be involved in the analysis and also, one can talk about people’s intended meanings, their assumptions, their purposes or goals, and the kinds of actions that they are performing when they speak. Lastly, looking at the forms, its meanings and context are sometimes not enough for us to understand the whole situation, and instead we have to deal with the case using Discourse Analysis (DA). This covers an extremely wide range of activities, from the narrowly focused investigation of how words such as ‘oh’ or ‘well’ are used in casual talk, to the study of the dominant ideology in a culture as represented, for example, in its educational or political practices. When it is restricted to linguistic issues, DA focuses on the record (spoken or written) of the process by which language is used in some context to express intention. However, within the study of discourse, the pragmatic perspective is more specialized and it tends to focus specifically on aspects of what is unsaid or unwritten (yet communicated) within the discourse being analyzed. For the pragmatics of discourse to be done, we have to go beyond the primarily social concerns of interaction and conversation analysis, look behind the forms and structures present in the text, and pay much more attention to psychological concepts such as background knowledge, beliefs, and expectations. Moreover, in the pragmatics of discourse, we inevitably explore what the speaker or writer has in mind.

IV. The Analysis of the Elements of the Crime through Interdisciplinary Studies

For emphasis, the following are the elements of libel/online libel

a. The imputation must be defamatory;

b. The imputation must be made publicly (through internet such as social media, etc);

c. The imputation must be malicious; and

d. The person defamed must be identifiable.

First element: There must be a defamatory imputation

Defamation means the offense of injuring a person’s character, fame or reputation through false and malicious statements. It is the publication of anything which is injurious to the good name or reputation of another or tends to bring him into disrepute.

The imputation can cover any of the following: a) Crime allegedly committed by the offended party; b) Vice or defect, real or imaginary, of the offended party; c) Any act, omission, condition, status of, or circumstance relating to, the offended party which tend to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead. Some examples include: branding somebody as having murdered his brother-in-law; enriching himself at the expense of others who trusted him; calling one a bigamist and becoming rich overnight through questionable transactions are obviously libelous and slanderous for they are malicious imputations of criminal acts tending to cause dishonour; and discredit and contempt of the complainant, are punishable under the provisions of Article 353 of the Revised Penal Code.

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8 Mendez vs. Court of Appeals and People of the Philippines, G.R. No. 124491, June 1, 1999
10 Supra, pp. 83-84
11 Mendez vs. Court of Appeals and People of the Philippines g.R. No. 124491, June 1, 1999
13 People vs. Dianalan, 13 C.A. Rep. 34
14 People vs. Dianalan, 13 C.A. Rep. 34
was found libellous for using the words such as “lousy”, “inutile”, “carabao English”, “stupidity” and “satan” which cast aspersion on the character, integrity, and reputation of respondent as a lawyer and exposed him to public ridicule.\textsuperscript{15} The word fool or crazy becomes defamatory if used to connote mental aberration.\textsuperscript{16} The word “mangkukulam” (a witch) is undoubtedly an epithet of opprobrium. To say one is such is to impute to her a vice, condition or status that is dishonorable and contemptible.\textsuperscript{17}

To evaluate whether one’s post or statement is defamatory, certain tests are applied. It is important that one must consider the construction of words and the meaning they convey. Words used are construed in their entirety or as a whole\textsuperscript{18} and taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them unless it appears that they were used and understood in another sense.\textsuperscript{19} The intention of the writer is immaterial as the question is not what the writer of an alleged libel means, but what is the meaning of the words he has used words or conveyed to those who heard or read them. What is taken into consideration is what the meaning that the words in fact conveyed on the minds of persons other than its author and the offended party.

The test of libelous meanings is not the analysis of a sentence into component phrases with the meticulous care of the grammarian or stylist, but the import conveyed of the entirety of the language to the ordinary reader. When neither party endeavors to show a hidden meaning or latent ambiguities in the publication complained of, it is for the court to determine whether its contents are libelous, after giving to the article as a whole such meaning as is natural and obvious in the plain and ordinary sense in which the publication would naturally be understood. Opinions of witnesses upon this point are immaterial.\textsuperscript{20} It is this element wherein cyber bullying is equated to online libel as when people “bash” a person, their intention was to defame or discredit the person to whom the comment or post is directed.

\textbf{Second element: There must be publication of the defamatory imputation}

Publication is the communication of the defamatory matter to some third person or persons.\textsuperscript{21} Libel is published not only when it is widely circulated, but also when it is made known or brought to the attention or notice of another person other than its author and the offended party.\textsuperscript{22} It is considered publication when a person parts with possession of the article or statement under circumstances or make arrangements, whereby the same may be adequately read by a person or persons other than the person to whom it is directed or targeted.\textsuperscript{23}

According to Article 355 of the Revised Penal Code, libel may be committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition or any other similar means. As stated earlier, the new generation has now access to new form of communication which is through the internet and specifically social media. A post or comment in social media is considered as publication as it is viewed by many social media users than the targeted person.

\textbf{Third element: There must be malice}

Malice is a term used to indicate the fact that the offender is prompted by personal ill-will or spite and speaks not in response to duty, but merely to injure the reputation of the person defamed.\textsuperscript{24} Since malice is a condition of the mind, it is not expressed but only be learned through statements of the person itself as it is implied. Malice is established either by presumption or by proof.

Malice in law is presumed from a defamatory imputation thus proof of malice is not required.\textsuperscript{25} The law presumes that the defendant’s imputation is malicious. Malice in fact denotes that the defendant was actuated by ill-will or personal spite.\textsuperscript{26} It may be shown by proof of ill-will, hatred, or purpose to injure.

Linguistics is normally encouraged in the analysis of this element such that if the article is not defamatory on its face or it is ambiguous, but can be considered libellous in light of the surrounding circumstances which

\textsuperscript{15} Buatis Jr. vs People, G.R. No. 142509, March 24, 2006
\textsuperscript{16} People vs. Lladoc, CA-G.R. No. 01432-GR, April 16, 1962
\textsuperscript{17} People vs. Carmen Barrio, G.R. No. L-20754 and G.R. No. L-20753, June 30, 1966
\textsuperscript{18} Jimenez vs. Reyes, 27 Phil. 52
\textsuperscript{19} Novicio vs. Aggabao, 463 Phil. 510, 516, (2003)
\textsuperscript{20} People vs. Encarnacion, C.A. 48 O.G. 1817
\textsuperscript{21} Sazon vs. Court of Appeals and People of the Philippines, G.R. No. 120715 citing U.S. vs. O’ Connell, 37 Phil. 767
\textsuperscript{22} Jimenez vs. Reyes, 21 Phil. 52
\textsuperscript{23} People vs. Atanaco, CA-G.R. Nos. 11351-R to 11353-R, Dec. 14, 1954
\textsuperscript{24} U.S. vs. Ubinate, 1 Phil. 471
\textsuperscript{25} Regalado Florez, (2009), Criminal Law Conspectus, p. 798, National Book Store, Inc.
\textsuperscript{26} U.S. vs. Canete, 38 Phil. 253
\textsuperscript{27} 1st paragraph, Art. 354, RPC
\textsuperscript{28} U.S. vs. Cañete, 38 Phil. 263
gave rise to its existence, the expert can convey that there is actual malice on the part of the offender or malice in fact which has to be proved.29

Fourth element: The person defamed must be identifiable

In order to maintain a libel suit it is essential that the victim be identifiable, although it is not necessary that he be named. It is enough if by intrinsic reference the allusion is apparent or if the publication contains matters of description or reference to facts and circumstances from which others reading the article may know that the plaintiff was intended, or if he is pointed out by extraneous circumstance so that persons knowing him could and did understand that he was the person referred to.30 Where no one is named or accurately described in the article complained of, it is not sufficient that the offended party recognized himself as the person attacked or defamed; it must be shown that at least a third person could identify him as the object of the libelous publication.31

V. The Application of Interdisciplinary Studies in Detecting the Language Crime: Particular Cases in the Philippines

Case 1: “Putang ina mo!” “Puta ka!” “Puta!” (literally translated: Your mother is a whore or prostitute!; You are a whore or prostitute!)

“Putang ina mo!” is a profane slang statement which most Filipinos use in everyday language. Usually, one hears or writes these foul words in cursing someone while in a disagreement or argument. The word “puta” does not necessarily connote the crime of prostitution, as defined in Article 202 of the Revised Penal Code.32 As a rule, the word is merely an expression of disgust or displeasure33 and does not in itself constitute an oral defamation or when written or published considered as libel. It is seldom, if ever, taken in its literal sense by the hearer, that is, as a reflection on the virtues of a mother.”34 However, it may be considered libelous if its surrounding conditions such as the circumstances, time, place and relationship are taken into account. Example: A status post from a Facebook user written on September 1, 2012 addressed to a Facebook user Miss Lal-lo 2012:

“a.k.a. kabit at pokpok....puta...malapit na karma mo puta...kasing baboy nang ugali mo...puta...kapal talaga ng mukha mo gaga...yan ang napala sa inyo...makasalalan kase kayo ng asawa ko bobo kaya pati yun walang kaalam alam nadadamay sa kababayan ninyo at kamulasan bobo na pokpok na kabit...hayup ka na ____________ nagbasa ka na nang bible...oh ano maliwanag na ba sa yo bobo na ang mga kabit hindi tangap nang diyos bobo...ang mga katulad mo na pokpok na kabit...puta at lalo na sa kabit sa teacher kagaya mo gaga...yan ang maling mali na nakalagay sa bibile...bobo ang asan na napunta anak mosa taba mo gaga...hahahahaahha..........bobo na fuck you....ano ganda sinasabi mo gaga eh laspag kana gaga...ganyan ang mga kabit...wait for your karma...tandaan mo may asawa yan teacher na yan at may anak...dadalhin mo yan gaga...tandaan mo pokpok na puta kabit....hindi ka pa tapos sa akin puta...putang pokpok...or putang kabit...kabit...kabit...fuck you __________________ laspag na uki mo gaga.....puta ka talaga....proud kabit na putang pokpok....”

In this post, it can be inferred that the statements were libelous following the evaluation of the elements. The statements were published as it was seen in a wall of a certain social media user which can be viewed by many. The victim is identifiable as her name was stated with particularity by the Facebook user. Assessing the language use through semantic and pragmatic analyses, there is a motive of defamation since the one who posted the comment tried to degrade the other’s persona by calling her as a mistress, a whore, an animal and even profane words. It is to be remembered that even if a statement is true or a fact, it can be libelous if there is not good intention or justifiable motive that accompanies the publication which in this case is apparent.35

29 U.S. vs Montalvo, et al, 29 Phil 595
30 Corpus vs. Cuaderno, Sr., 16 SCRA 807
31 Kunkle vs. Cablenews-American, 42 Phil. 760
32 People vs. Atienza, G.R. No. L-19857, October 26, 1968
33 People v De Guzman, G.R. L-19075
34 Reyes v People, G.R. L-21528-29
35 Translated as: a.k.a. mistress and whore...good thing that happened to you...you and my husband are sinners...you even joined in your disgusting acts and misfortunes those who do not know anything stupid mistress whore...you are an animal!...read the bible...is it clear stupid that mistresses are not welcomed by the lord stupid...woman like you who are a whore, prostitute at a mistress of a teacher like you stupid...that is most wrongful act in the bible... stupid...where did your brain go...in your fats stupid...hahahahaahha...stupid fuck you...you are referring to what beauty...you are overused stupid...whores are like that...wait for your karma...remember that guy is a teacher who has a wife and kid...you will take that as a burden...remember that whore and a prostitute mistress...im not yet finished with you mistress...whore...whore...whore...fuck you...your vagina is overused stupid...you are really a whore...a proud whore mistress..." (Original texts are all in Uppercase, but due to publication purposes these are changed to Lowercase.)
36 Alonzo vs. Court of Appeals, People of the Philippines, et al., G.R. No. 110088, February 1, 1995
On the other hand, a post from Facebook which states “Puta ka Nicole, hahaha”\(^{37}\), or “NOYNOY RESIGN, Puta ka pinamahal mo yosi. HAHAHA”\(^{38}\) are not considered as libelous despite the fact that it calls a person a whore since upon examination of the language, it does not tend to degrade a person but mere an expression accepted in the Filipino culture and society.

**Case #2:** Christopher Lao Floating Car: Not informed of flood waters of Manila (posted in Youtube with 276,399 views 681 likes; 110 dislikes) [http://WhenInManila.com](http://WhenInManila.com) (Uploaded on Aug 3, 2011)

“In all fairness, he was just really in a bad position with emotions flying all over the place after a mishap like that. There is a distinct difference between laughing at this and cyber bullying someone. Please represent yourself and your upbringing in a sophisticated manner. Laugh about it but don't turn it ugly. You have been informed.”

Given the above elements of online libel, we cannot really conclude that the one who posted this video on Youtube violated the law since he just made the video public and not intentionally to defame Mr. Lao. In fact, he put the above message to basically inform the public about the incident unless it would be interpreted as a satire.

**E.** ka katanga.. Paano kaya nakapasa sa bar to.. Medyo matagal na to pero kabwiset lang.. Kalalaki mong tao sinisisi mo gobyerno sa kat“I just watched a video with him as a guest to this not so popular car enthusiast talk show.. He is just plain dumb. Abogado ka. Ganun angahan mo. Tanga!” \(^{39}\) 3 months ago

“Wala na siguro kukuha sa kanya bilang abogado Kahit tumakbo pa siya bilang politiko, walang boboto sa kanya. Haha...” \(^{40}\) 2 years ago

**F.** “LAWYER?? san banda? ang BOBO kaya.” \(^{41}\) 3 years ago

“NapakaBOBO mo putangina ka!” \(^{42}\) 3 years ago

With the above statement posted in the comments section of the video, there are words that can be considered defamatory like the use of profane language such as calling Mr. Lao dumb, stupid, and idiot. Also present in the comments are those questioning his profession and how could he even had the chance to pass the bar exam to be a lawyer.

“*The people who cyberbullied Chris Lao were jealous of him because the guy had a nice car and they did not.*” 1 year ago

We also found some comments like the one above that those people who are reading and/or commenting are aware that others are cyberbullying Mr. Lao.

**G.** “*ingat kayo sa mga sinsasabi nyo, mukhang gaganti yan pag pumasa yung Cybercrime law.*” \(^{43}\) 2 years ago

Also, some of the comments state that some are aware that there is a possibility of punishing people who cyber bullied Mr. Lao upon the passing of the Cybercrime Law. Then, with that we can say that some people

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\(^{37}\) Translated as “You are a whore nicole, hahaha”

\(^{38}\) Translated as “NOYNOY RESIGN. You are a whore, you made cigarettes expensive. HAHAHA”

\(^{39}\) Translated as “You are a lawyer. You're that stupid. How could this person even pass the bar.. This post is quite old but it's just irritating.. You're a man yet you're blaming the government for your stupidity. Idiot!”

\(^{40}\) Translated as “Maybe no one will get him as a lawyer. Even he would ran as a politician, no one will vote for him.”

\(^{41}\) Translated as “Which part? Such a DUMB.”

\(^{42}\) Translated as “You're so DUMB you motherfucker!”

\(^{43}\) Translated as “Be careful in what you are saying, he might have a revenge if the Cybercrime law got passed.”
believe that there is really a cyber bullying happening as well as possible defamation cases with the abovementioned case.

V. Conclusion

Indeed, new media gave rise to a new platform for the people to communicate, express themselves through various means. The reality of having the internet, particularly social media and social networking sites, makes it more accessible for the people to express themselves unrestrictedly. However, people now recognize the recent passage of a cybercrime prevention law in the Philippines seemingly creating a great fear and threat to the right of people to free expressions and speech. More especially that Filipinos are dubbed as amongst the world’s digital natives and was declared as the Social Media Capital of the World in 2008. Since this threat on the rights of the Filipinos to freedom of speech and expression lies on the elements of the said crimes, most of these elements were evaluated and with the abovementioned discussions, it is made clear what are the supposedly determining factors on whether people violated the law or not. Definitely, the elements of online libel demands more than what the law depicts as the use of language plays a major role in understanding this so called language crime. The criminal offense then requires more understanding beyond the law itself, thus relating it to the study of culture and language use as highlighted in the fields of semantics and pragmatics, as well as the use of discourse analysis. All the people involved in this possible crime, whether they are the perpetrator, witness, judge or whatever participation they engaged in, it is necessary to look at the language use, the speech event, language in its social context and all the more, the culture where it was uttered.

VI. Proposition

With the conclusion in mind, this study reflects the great need of interconnecting law, language and society, thus strengthening the call for interdisciplinary studies in the Philippines especially instituting courses in forensic linguistics. Forensic linguistics is being used in many areas that relate to crimes or answer questions arising in examining the elements of the crime as well as other aspects of implementing the law. Some of the areas of research and expertise include:

- Voice identification – used to determine whether the voice on a threatening tape recording is the genuine voice of the defendant and this is sometimes called forensic phonetics which can be used in crimes of threat
- Author identification – used to determine the writer of a particular text through comparisons of known writing samples of the suspect and sometimes called forensic stylistics which can be used in cases of libel/online libel
- Discourse analysis – used to analyze the structure of a written or spoken utterance and to determine whether a suspect is agreeing to engage in a criminal conspiracy
- Linguistic proficiency – used to analyze whether the suspect understands the Miranda warning or known as the police caution
- Dialectology – used to determine which dialect of a language a person speaks in order to show that a defendant has a different dialect from that on an incriminating tape recording
- Linguistic origin analysis – used to determine what a person’s native language is and is closely similar to forensic dialectology
- Linguistic veracity analysis – used to determine whether a speaker or writer is being truthful

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Legal Protection of Right to Privacy in the era of Information Technology

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Abstract
Privacy is a fundamental human right recognized in the UN Declaration of Human Rights, the International Covenant on Civil and Political Rights and in many other international and regional treaties. Privacy underpins human dignity and other key values such as freedom of association and freedom of speech. It has become one of the most important human rights issues of the modern age.

In the early 1970s, countries began adopting broad laws intended to protect individual privacy. Throughout the world, there is a general movement towards the adoption of comprehensive privacy laws that set a framework for protection. Most of these laws are based on the models introduced by the Organization for Economic Cooperation and Development and the Council of Europe.

The new technologies have enhanced the possibilities of invasion into the Privacy of individuals and provided new tools in the hands of eavesdroppers. Individual Privacy is at a greater stake than ever before. Computers and the Internet can be used to amass huge amount of data regarding people, profile it in various ways, commodify it and deal with it in a manner which could violate individual’s privacy.

Modern technological innovations and developments in the field of computers and Internet have created an environment in which there is inexpensive and ready access to an ever growing pool of personal information about indefinable individuals anywhere in the cyber world. “Privacy in the technology driven world is a difficult proposition. Technology has become kind of double edged sword, on one hand it equips the person to safeguard his privacy and on the other it helps in blowing the privacy cover, one may had”.

Key words: Privacy, Human Right, Technology.

1. Introduction

Privacy Protection in the Information Era has become a major challenge for those who love their Privacy. Governments around the world are indulging in illegal and unauthorised e-surveillance and eavesdropping that the Constitution of their respective Country is not permitting.

There are two theories that are detrimental to Civil Liberties Protection in Cyberspace. The first one presumes that if a person has done nothing wrong, he needs not to be afraid of the illegal and unauthorised e-surveillance and eavesdropping of his Government. The second one is even more sinister in the sense that it presumes that National Security is “Above” Civil Liberties in “All Cases”, without even defining what constitutes National Security. Both these theories are not only “Faulty” but they are also “Inconsistent” with National Constitutions and Human Rights Protection regime of United Nations Declaration on Human Rights.

There is no escape from this situation except that Human Rights Protection in Cyberspace must be Internationally Recognised. The United Nations (UN) has the “Legal Capacity” to do so but it has failed to protect this Human Right in Cyberspace so far. The only solace can be found in the form of the text approved by the United Nations regarding Right to Privacy in the Digital Age. But that is too little and too late and a more “Aggressive Role” must be played by UN in this regard.45

The right of privacy is well established in international law. The core privacy principle in modern law may be found in the Universal Declaration of Human Rights. Article 12 of the UDHR states “No one shall be subjected

to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

The UN Guidelines for the Regulation of Computerized Personal Data Files (1990) set out Fair Information Practices and recommend the adoption of national guidelines to protect personal privacy. Appropriately, the UN Guidelines note that derogation from these principles "may be specifically provided for when the purpose of the file is the protection of human rights and fundamental freedoms of the individual concerned or humanitarian assistance."

More generally, the protection of privacy is considered a fundamental human right, indispensable to the protection of liberty and democratic institutions. William Pfaff made this point well when he wrote recently, "The defining characteristic of totalitarianism is its assault on privacy. The individual in a totalitarian state is deprived of privacy in order to destroy his or her liberty."

To address this challenge, it is necessary to review what we know about the protection of privacy, what we know about threats to privacy, and what we do not know about the future of privacy protection. Then we should consider the competing views of government, the private sector and citizen organizations as to how we should proceed. Finally, we must review our fundamental concerns as citizens and representatives of organizations involved with matters of human rights and outline a plan for future action.

2. The Protection of Right to Privacy

The protection of privacy has multiple dimensions and a well-established history. The privacy is a fundamental human right and it is firmly established in law, and that Fair Information Practices provided a useful articulation of privacy principles in the information world.

(1) Privacy as a fundamental right

Philosophers and ethicists have described privacy as indispensable characteristic of personal freedom. Privacy is associated with autonomy, dignity, spirituality, trust, and liberty. References to the value of private life may be found in the bible, the history of Periclean Athens, as well as the history and culture of many people around the world.

The right to privacy is inherent and inalienable in any society though its degree or depth may vary depending on the culture, religion, scientific progress and the political and legal systems. However there is a hard core of the personal information which be protected from intrusion and a hard core of personal information which can be disclosed to the public. The reason for such privacy and publicity is the public interest. In between them lies a flexible part which may or may not be protected under the head of right to privacy depending on a particular situation in a society.

The American jurist Louis Brandeis described privacy as "the right to be let alone" and as "the most fundamental of all rights cherished by a free people" in a famous article on the Right to Privacy (1890). Brandeis noted that French law provided relief for invasions of private life and urged the adoption of a similar legal right in the common law countries. The right was first recognized in the United States in a 1902 case in the state of Georgia. Since that time courts in the United States and around the world have often allowed individual plaintiffs to seek legal remedies for invasions of private life.

Privacy is a concept related to solitude, secrecy, and autonomy, but it is not synonymous with these terms; for beyond the purely descriptive aspects of privacy as isolation from the company, the curiosity and the influence of others, privacy implies a normative element: the right to exclusive control of access to private realm.\(^{46}\)

In the realm of information technology, the right of privacy has focused on the ability of individuals to control the collection and use of personal information held by others. A German court has described this as the right of "informational self-determination." This right is often articulated as fair information practices and codified in civil law.

(2) The right of privacy is established in law

The right of privacy is well established in international and national law. Following the adoption of the Universal Declaration of Human Rights in 1948 and article 12 which speaks directly to the issue of privacy, similar provisions were adopted in the International Covenant on Civil and Political Rights, the European Convention on Human Rights, and other regional conventions and agreements.

At the national level, most governments have a general right of privacy set out in their Constitutions. Privacy rights have also been established by means of case law and enactments of legislatures. Such laws typically seek to protect privacy in a particular context, such as laws that protect the privacy of communication by limiting the circumstances in which police may undertake wiretapping or when a merchant may sell personal data.47

Interestingly, the integration of the European countries and the creation of the European Union have underscored the clear establishment of privacy as legal claim. The European Union Data Directive resulted from the need to carry forward certain legal rights even as the legal and economic arrangement among the European governments was undergoing a substantial transformation. The effort in Europe to extend legal frameworks for privacy protection has encouraged similar efforts in East Asia, North America, and Latin America. That privacy protection remains a central concern for governments on the eve of the twenty-first century is a significant indication of the importance of this fundamental human right.

a) Fair Information Practices

The Principles of Privacy are often articulated as "Fair Information Practices." Fair Information Practices set out the rights of those who provide their own personally identifiable information and the responsibilities of those who collect this information. Although there is not fixed agreement on what specific principles constitute Fair Information Practices, there is general agreement about the types of principles that are likely to be included in a set of Fair Information Practices. These include the right of an individual to limit the collection and use of personal information, to obtain access to the information when it is collected, to inspect it and to correct it if necessary, transparency, and to have some means of accountability or enforcement to ensure that the practices will be enforced. The responsibilities of data collectors include the obligation to maintain security of the information, to ensure that the data is accurate, complete and reliable so that inappropriate determinations about an individual are not made. Some commentators have recently proposed that Fair Information Practices also include such principles as the right to anonymity and minimization of data collection.

Fair Information Practices provide the basic structure of most privacy laws and polices found around the world. They can be seen in such general agreements as the OECD Privacy Guidelines of 1980 as well as more detailed legal code as the Subscriber Privacy provision contained in the US Cable Act of 1984. Current efforts to establish privacy protection for the Internet typically focus on the application of Fair Information Practices to Internet-based transactions.48

(3) Threats to Privacy

The threats to privacy came from multiple sources. They can be broadly classified as technologic threats, threats from actions of government, and threats from the private sector and commercial services.


48Mr Marc Rotenberg, Director, Electronic Privacy Information Center, United States of America; http://www.unesco.org/webworld/infoethics_2/eng/papers/paper_10.htm last visited on 23 January 2015.
a) Technology Threatens Privacy

In the modern era, technology has long been viewed as the source of many privacy concerns. But the relationship between technology and surveillance is not a simple one. Technology takes on certain forms and may lead to the adoption of new systems for surveillance by a process that might almost be understood as dialectic between the purposeful creations of particular system for surveillance, the subsequent development of a means for surveillance not previously considered, and then the resulting creation of a new purposeful system for surveillance. It would be tempting to view this process as almost autonomous, but human accountability should not be ignored in any system of surveillance.

Among the key characteristics of technology in the surveillance realm are amplification, routinization, and sublimation. Amplification refers to the ability of technology to extend the ability to gather information and intrude into private life. Examples of amplification are linked directly to the sensory abilities. A zoom lens on a camera allows a reporter to see further and record events that might not otherwise be observed. A listening device permits a police agent to intercept and overhear a private communication. New techniques for the detection of heat behind walls make it possible for police to determine whether grow lamps are in use inside a home, possibly indicating the presence of marijuana.

Techniques for amplification invariably also capture information even beyond that which may be justified by the initial inquiry. A paparazzi's lens turned on a celebrity may capture a private or personal moment. A listening device installed by a police officer to monitor the activities of criminals may also record the conversations of innocents. The device to detect heat behind walls may detect two people making love upstairs as well as the marijuana grow lamps located downstairs.

There is considerable debate about whether it is appropriate to regulate techniques of amplification. While it is true that some of these methods intrude into private life, it is also clearly the case that such technologies have beneficial applications. Regulating the technique rather than the activity inevitably raises the danger of criminalizing behavior that might otherwise be considered permissible. Thus one of the first lessons of legislating to protect privacy is the need to focus on the underlying activity and not the technology itself.

Routinization is the process of making intrusion into private life an ongoing process. Here technology is used to establish a pattern or practice of surveillance. Again it is possible to conceive of both appropriate and inappropriate forms of routinized surveillance. A camera turned on a bank cashier's desk is probably an appropriate use of surveillance technology as it provides protection to both the bank and the customer in the case of a robbery or simple dispute. However, a camera placed in the changing room of a department store would be more problematic. While it could be argued that the purpose of the camera is to deter shoplifting and lessen the unnecessary costs to the merchants, customers are likely to find a camera in a changing room simply too intrusive.

Techniques for routinization are increasingly joined with methods for recording so that a camera trained on a street corner now routinely records all activities that are viewed and a phone line for a service representative routinely records all conversations with customers. We are still in the early stages of incorporating new techniques in the realm of routinized surveillance, but it should be anticipated that the next stage in these systems will be the adoption of methods for processing information so that it would be possible for the camera in an airport to view the facial profiles of passengers in a terminal, compare these images with a massive database of facial profiles, and determine in virtually real-time the actual identity of individuals in the terminal.

Sublimation is the means by which a technique for privacy invasion becomes increasingly difficult to detect. Hidden cameras, listening devices and similar data gathering techniques are particularly problematic because there is little opportunity for the data subject to escape detection and frequently little opportunity in the political realm to challenge the desirability of such techniques. Illegal wire surveillance by law enforcement agencies is a longstanding privacy concern in part because it is so difficult to detect, to assess, and to challenge. One legislative approach that has been adopted to address this problem.

While technology is not required for an invasion of privacy, the ability of techniques to amplify, routinize and sublimate surveillance has traditionally raised some of the greatest privacy concerns.49

49Mr Marc Rotenberg, Supra Note 4
b) Governments Threaten Privacy

Governments are the largest repositories of personal information. For example, the Tax department in any country has details of a citizen’s income, which even his spouse may not know.

Since the Government and the citizen have a mutually dependent and beneficial relationship, it is not possible to deny the Government the right to know some key personal information including his identity, age, income, presence of communicable deceases etc. Government can also diminish privacy through schemes for compelled identification, drug testing, physical searches of one’s home or person, database profiling, genetic testing, and polygraph examinations to name just a few.

Government threats to privacy are particularly problematic because once established, citizens have little choice but to comply. There are no alternatives to a requirement for national identity, or drug testing as a condition for public employment.

Those actions by government that have provoked the most outrage oftentimes involve proposals for national identity, census enumeration, and recently proposals to regulate the use of privacy enhancing techniques such as encryption.

Transparency, which is a laudable goal for the functioning of democratic society, takes on a different meaning in the context of government surveillance. Governments often seek a “transparent citizenry,” a populis whose actions are readily identifiable and easily monitored.

c) Corporations Threaten Privacy

In the workplace, corporations seek to exert greater control over workers through a variety of monitoring and surveillance practices. Such practices include the monitoring of telephone calls and computer use, the video surveillance of change rooms and bathrooms, drug testing, and polygraphs.

More generally, corporations threaten privacy in the marketplace through the extraction of commercial value from consumers in their personally identified transactions. It is no longer sufficient for customers to offer payment for goods and services. They must now also provide personal details that can then be used by companies for subsequent purposes. Some requests are necessary and appropriate for a particular transaction. For example, a person who wishes an item to be shipped to his or her home should expect to provide a home mailing address. In many more data collections are unrelated to a particular purpose.

This process of extracting commercial value in the marketplace might be called the "commodification of identity." Efforts to limit this process focus on either regulatory restrictions on the collection of information or technical means to promote commercial transactions that do not require the disclosure of personally identifiable information.

In summary, the danger with corporation is the emergent of the "transparent worker" or the "transparent consumer," individuals who because of their economic relations with private corporations are compelled to disclose aspects of their personal lives they might otherwise choose to keep private. Transparency in this relation, as in the relation with government in the context of surveillance, is one-sided. It is not the transparency of a window, but that of a one-way mirror.

(4) Critical Issues in Protecting Privacy

a. Will the Internet provide greater privacy or less

It remains an open question whether the Internet will see a significant increase or decrease in privacy. There is certainly a strong case that the Internet will usher a new era of massive, routinized surveillance. It is possible with

the current protocols for Internet communication to record virtually every activity of an Internet user, the information he receives, the people he communicates with, his preferences and his preferences. Such extensive data collection is far more intrusive than was possible in the previous era of broadcast communication or in typical commercial relations. In the broadcast era, recipients of information were largely anonymous. In typical commercial relations, information is typically obtained only once a purchase occurs.

There are also strong commercial incentives on the Internet to reduce privacy. Many of the current business models are based on concept of "personalization" and "one-to-one marketing" that require far more knowledge about individual preferences and buying habits than was previously available in a mass market commercial environment. Many web sites today offer to "personalize" their display for users or ask extensive questions about a user’s interest before any commercial relationship has been established.

The technical methods of Internet come together with the personalization marketing goals in the implementation of such protocols as "cookies," which allow the tracking of users across various web sites and the targeting of commercial advertising. Elaborate "ad servers" crate customized advertising on a web site for a particular user based on what is known about the user from other web sites he or she has visited. These techniques threaten to make real that what is viewed on a computer screen in one's home could be known to almost anyone around the world.

Still, it cannot be ignored that the Internet provides a platform for new forms of communication and interaction that can literally builds in privacy safeguards. The use of encryption techniques in browser software, for example, permits the transfer of credit card numbers and other personally identifiable information in a secure manner. Anonymous payment techniques would allow commerce without the disclosure of personally identifiable information. Anonymous remailers make possible the sending of messages without requiring the disclosure of the sender's identity.52

There are government objections to these techniques as well as strong commercial incentives to minimize anonymous activity. But for the first time it is possible to conceive of a technological environment that properly designed could provide new levels of privacy protection.

b. Will legal safeguards survive globalization

One of the great challenges to privacy protection is only partially technical in nature. The growth of the Internet has concurred with the increased globalization of world trade, the rise of the European Union, the diminished ability of central banks to control currency markets, and even the question of whether individual nation states can effectively exercise their sovereign authority.

In this environment, it has become a commonplace to simply assert that national governments will be unable to exercise any legal control over the Internet and also that current law is unlikely to have much of an impact in this digital world. But this view is wrong in at least two respects. First, governments do in fact exercise a great deal of control regardless of what the "cyber-intelligentsia" claim. Internet disputes are resolved in real courts and computer criminals are thrown in real jails. Second, as the Internet has become more commercial and more mainstream, the reliance on traditional legal institutions has increased not diminished. There are no formal methods for adjudication in cyberspace and thus governments and private parties have turned naturally to traditional means for dispute resolution and the prosecution of harmful acts.

Third, and perhaps most significantly, governments have found that where there are interests that should be protected, collective action can be taken at the supra-national level to protect these interests. Thus, for example, national governments particularly the United States have moved aggressively to establish international agreement to protect copyright in the digital environment. The World Intellectual Property Organization, the World Trade Organization, the Berne Convention all reflect the ability of national governments to act collectively to protect interests that may be impaired by the emergence of digital networks or the increase in global trade.

52 Mr Marc Rotenberg, Supra Note 4
In many respects, privacy protection anticipates the problem of protection across national borders. Indeed, the OECD Privacy Guidelines were a direct response to questions about privacy and transborder dataflows. Further, the Data Directive of the European Union is a clear attempt to harmonize protection across national borders. While it is not clear if national legal norms will survive this process of globalization, it is clear that a good foundation has already been put in place.\(^5\)

c. Is law a sufficient instrument to protect privacy

For much of the history of privacy law, the relationship between law and technology was understood as a simple equation: technology creates the risk to privacy, it is the role of law to protect privacy against this incursion of technology. Thus privacy law has been established to control the use of personal information collected by means of computerized databases, private conversations overhead though telephone networks. Although it has sometimes been said that technology outpaces the law, raising the question of whether law can operate effectively in a technological environment, it should be noted that legal standards based on fair information practices, rather than the regulation of particular technique, have actually withstood the test of time fairly well. Thus the US Privacy Act of 1974 is still operational a quarter of a century later and the OECD Guidelines of 1980 continue to exert enormous influence on the shaping of privacy practices almost two decades after their adoption. Still, given the opportunity that the Internet provides for new technical solutions for privacy protections, it is worth considering how such methods might be developed and adopted.

d. Protection of privacy with new technology

The limitations of law have renewed the focus on technical methods to protect privacy. But it remains unclear whether technology to provide a comprehensive solution. It is necessary in the first instance to distinguish between genuine technical means to protect privacy and those technical means that in fact promote collection of personally identifiable information. Privacy Enhancing Technologies (PET) are generally understood as those that limit or eliminate the collection of personally identifiable information. Such methods include techniques for anonymous and pseudo-anonymous payment, communication, and web access. By limiting the collection of personal information, these approaches enable transactions avoid the creation of personal information. By analogy to the environmental context, this would be much like the design of an engine that generated no pollutants Privacy Extracting Techniques (PET) typically create a technological framework that facilitates the disclosure of personal information, often without any assurance of protection or legal safeguards. These techniques which are often confused with true PETs are put forward by commercial firms and others as a "technical solution" to privacy when in fact they are designed to make it easier to obtain personal data. Whether new technology can protect privacy will thus depend on several factors, including the progress in the development of these techniques, their acceptance by consumers and others, and the ability to discern actual methods for privacy protection from those that are likely to further erode privacy protection.\(^5\)

(5) Influences to address new Privacy Challenges

a) Private sector

The private sector argues that market systems and new technology provide new opportunities to protect privacy that do not require regulation or the rule of law. They believe that it is possible to use contract-based interactions to negotiate privacy preferences. These preferences, they believe, will vary from individual to individual and circumstance to circumstance.


Techniques to implement this approach include P3P, the Platform for Privacy Preferences. P3P is a technical standard that allows a web client or user to articulate a privacy preference and a web server to specify the level of privacy that will be respected. When a client contacts a server, a negotiation takes place between the two rule sets. If the client’s privacy preferences will be accommodated by the server, then the session will begin. If the client’s privacy preferences will not be accommodated by the server, then the client can decide whether to continue.

A related approach is trust labels, which provide a visible image on a web page that is linked to a privacy policy. There is no assurance with the seal that any particular privacy policy will be implemented, but the seal does provide a readily identifiable link to a company’s privacy policy.

There are many problems with the so-called “self-regulatory” approach to privacy protection. Fundamentally, the initiatives eliminate any baseline requirement for privacy protection and eviscerate currently established privacy rights and norms. One of the consequences of the contract approach is to exclude from certain activities individuals who express high or even moderate privacy preferences. Thus, the problem of discrimination against those who wish to exercise a privacy right emerges. Privacy laws, which generally recognize a principle of fair or lawful obtaining of personal information, would generally not permit such an open-ended negotiation.

There is also the interesting question of whether a negotiating privacy relation is actually efficient as the economic argument presumes. Consider the application of a negotiated privacy protection to the current regime of telephone communication. Such an approach would require individuals to consider at the time of each call how much privacy they desire and then determine whether the recipient of the communication, or for that matter, the communication carrier, will respect the individual’s privacy preference. On first pass, a call to a doctor may require a high privacy preference. A conversation with a friend may require a moderate privacy, while a call to a merchant may be only a low privacy need. What if the call to the doctor is only to confirm the time of a previously scheduled appointment, while the call to a merchant is to purchase a surprise gift for a family member?

Such a negotiation over privacy preferences in routine telephone communications would certainly introduce new transaction costs. Moreover, it would tend to squeeze out the high level of protection that all telephone users currently enjoy for telephone calls of all purposes.

Serious doubts remain about the Private Sector claim that privacy can be adequately protected by self-regulatory means. Moreover, the self-regulatory approach is likely to result in a substantial reduction in the protection of privacy.

b) Government

The government often emphasizes the benefits of new technology to protect public safety and to promote efficient administration. One of the most problematic recent debates concerns the use of CCTV. The government argument is that these cameras placed on street corners reduce the incidence of crime by subjecting individuals to ongoing surveillance.55

Governments have also proposed means of national identity to promote the efficient administration of services

In the development of these new means for monitoring the activity of citizens, government might acknowledge a privacy concern but are unlikely to allow privacy to substantially change or pre-empt the development of such systems. Privacy is sometimes accommodated so as to legitimate a new system for social surveillance.

c) Citizen Groups

Citizen groups argue that the primary concern should be to extend fundamental legal norms to the new digital world.

The Global Internet Liberty Campaign, a coalition of more than 50 NGOs in 20 countries, took action on the question of the citizen’s right to use cryptography and other technical methods to protect personal privacy when the subject was under consideration by the Organization for Economic Cooperation and Development in 1996.

The matter of government efforts to regulate the use of encryption was already a controversial matter, particularly among users of the Internet. A noted cryptographer Phil Zimmerman faced prosecution in the United States for the alleged distribution of cryptographic techniques that were then considered by US export regulation to be ammunition requiring license. Internet organizations had organized campaigns against the prosecution of Zimmerman and the restrictions on the use of encryption. These campaigns invariably emphasized the excesses of government control in this area.

But it was the GILC that first clearly articulated the basis for this claim as a matter of international legal norms. The organization issued a Resolution in Support of the Freedom to Use Cryptography in Paris that stated at the outset that "the use of cryptography implicates human rights and matters of personal liberty that affect individuals around the world," and further that "the privacy of communication is explicitly protected by Article 12 of the Universal Declaration of Human Rights, Article 17 of the International Covenant on Civil and Political Rights, and national law."

On the basis of these norms, the GILC urged the Organization for Economic Cooperation and Development base its cryptography policies "on the fundamental right of citizens to engage in private communication

The Cryptography Guidelines of the OECD included a principle on Protection of Privacy and Personal Data that stated "The fundamental rights of individual to privacy, including secrecy of communications and protection of personal data, should be respected in national cryptography policies and the implementation and use of cryptographic methods."

\textbf{d) What Should Guide Our Actions}

Faced with these new challenges to privacy, and these competing views of how best to protect privacy, how should we proceed? If we were primarily concerned with the economic benefits of our actions, we might ask which course would provide the most short-term commercial gain. But as our focus is principles of human rights and the realization of the citizen in the Information Society as full participant with meaningful claims in the political world, we should take a different approach.

First, we should accept the premise that law has a fundamental role in the protection of human rights and democratic institutions. While is an imperfect instrument, it also establishes the principle that all people in all countries of the world, regardless of wealth or social status, are entitled to certain essential freedoms and one of these freedoms is the protection of private life. Law not only imbues citizens with the rights that are necessary for self-governance it also provides the legitimacy that allow others to rely on a legal system for redress.

Second, we should not adopt a view of technology that it is autonomous or stands apart from the actions of specific individuals or institutions. As Thomas Edison said, "What man creates with his hand, he should control with his head." We should call for accountability for those who develop systems of surveillance while at the same exercising our own responsibility to engage the political process to seek technical methods that advance the aims of privacy protection.

In the end, we must side with the interests of the citizen. Neither governments nor corporations are in much need of political assistance these days. Both can take care of their interests with great efficiency. But citizens and citizen organization must continue to engage the political process if the rights of the individual are to be preserved in the online world.

(6) Measures to be taken

The protection of privacy is increasingly a call for political action

a) Reiterate support for fundamental legal instruments

There is a tendency in all discussions of cyberspace to imagine that our society has gone directly from the era of the horse-drawn cart to the age of space exploration with hardly a step in between. But of course, the history of communications technology is filled with many stages at which time issues such as technological change, internationalization, the role of law and technical standards are considered.

The protection of privacy is one of the issues that has been previously considered in the development of new technology, and it would be wise to recognize and understand the previous efforts to address this issue.

Article 12 of the Universal Declaration of Human Rights, the OECD Guidelines, the UN Convention, and other similar documents are all still relevant to the current effort to preserve privacy in the information society. Indeed, these documents may provide the best, most well informed consideration to date of how best to protect this fundamental human right in light of technological change.

Thus, the starting point for an international effort to protect privacy in our new online world should be to reiterate support for international instruments on privacy protection.

b) Assert the applicability of legal norms across national borders

A second effort to be to assert the applicability of legal norms across national borders. Although it may be fashionable to speak about the Internet as a "regulation-free zone," in fact there is plenty of regulation for the Internet, except not enough to protect the privacy of its inhabitants. Users of the Internet have at least as much right to claim a legal right to protect their personality as authors and holders of copyright have to claim a legal right in their artistic works. The creation of the borderless cyberspace has not slowed the call for the adoption of new laws to protect digital works; it should not slow the effort to adopt new safeguards for the digital persona.

The protection of privacy across national borders benefits in particular from the establishment of international legal norms, such as Article 12 of the Universal Declaration of Human Rights, as well as previous efforts to promote the transborder flow of information while respecting the privacy of the individual as was the aim of the OECD Guidelines of 1980.

It would be a grave mistake for UNESCO and the human rights community generally to turn its back on these well-established legal norms and leave the protection of privacy to the cold logic of the marketplace and the technical methods that are intended to promote the disclosure of greater amounts of personal data.

c) Promote the development of technology to protect privacy

In the first instance, the best form of privacy protection by technological means is that which ensures anonymous transactions. Anonymity is the ideal privacy technology because it avoids the creation and collection of personally identifiable information. Anonymity exists by custom and practice in many contexts today. Travel, communication, commerce, as well as the receipt of information typically occur with a high degree of anonymity, at least to the extent to the actual identify is rarely known for the person on the sidewalk, the fellow at the payphone, the woman who purchases lunch, the reader of a magazine or the viewer of a television program.

Techniques for anonymity should be robust, trust-worthy, and simple to implement in routine commercial transactions. All reasonable efforts should be made to promote the development and adoption of techniques for anonymity and related approaches for the protection of actual identity.
This defence of anonymity is not intended to promote the life of the hermit or to discourage social relations. Quite the opposite. A strong right of anonymity gives individuals the opportunity to freely choose with whom to share aspects of personality and to form bonds of trust. Anonymity is not a description of a static state. It is a rather the starting point for a dynamic, evolving series of social relations that derive their authenticity and value from the opportunity for each individual to choose his or her friends, colleagues, neighbours and lovers.

In the second instance, the next best form of privacy protection by technological means is that which ensures the application and enforcement of Fair Information Practices. For example, techniques that allow individuals to limit the use of data, to gain access to their own data, and to make corrections where appropriate should be encouraged as they seek to establish by technical means those rights and responsibilities that would otherwise be accomplished in law.

d) **Encourage citizen participation in decision-making**

Finally, it important to emphasize the procedural consideration that should guide the development of all law and policy concerning the development of the Information Society and that is the active and meaningful participation of citizens in the decision-making process. Such interests are invariably underrepresented in decisions taken by national and international governing borders.

No group has a greater stake in the protection of privacy than the new inhabitants of cyberspace. Let us enjoy the benefits of the future while preserving the freedoms of our past. That is the promise and the challenge of the Information Society.

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**Resources**


Bennet, *Regulating Privacy* (University of Illinois 1992)


Global Internet Liberty Campaign web site [www.gilc.org]


EPIC web site [www.epic.org]


Privacy International web site [www.privacy.org/pi/]


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ABSTRACT

Computer Crime Act of Sri Lanka (hereinafter CC Act/SL) was introduced in the year 2007, with the objective not only of keeping pace with the developments of the technology but also with the legislative initiatives of comparative jurisdictions. Although designed as part of a major collaborative effort with expert participation, today, after seven years of operation the inability to make necessary timely amendments has failed the Act in its capacity to stand up to the challenges posed by the rapid advancement of telecommunications technology. In addition to being restrictive and selective in identifying punishable computer related conduct, definitions provided by the Act for certain important technical terms have hindered the statute’s ability to adapt to changing circumstances.

The first part of the paper while emphasizing the need for the law to be resilient in the face of technology, seeks to identify the key areas of the Act which need to be revisited and revised in light of several specifically recognized developments in telecommunications technology. The main objective of the study as discussed in the second part is to propose specific amendments to the identified provisions with reference to model laws and similar legislation in comparative jurisdictions such as UK, USA and South East Asian nations, and academic opinions.

Key Words: Cyber Crimes, Hacking, Information and Telecommunications Technology Law

Introduction

CC Act/SL was introduced in the year 2007, with the objective not only of keeping pace with the developments of the technology but also with the legislative initiatives of comparative jurisdictions. The Act was a result of a long line of coordinated legislative initiatives aimed at harmonizing the law with information and communications technology based conduct within a sui generis approach. Provisions of the Act reveal an attempt at drawing not only on legislation from comparative jurisdictions such as the UK but also on international instruments such as the European Convention on Cybercrime.

The paper seeks to analyse selected provisions of the Act in order to assess the effectiveness of the Act as a tool combating increasing criminal tendencies relating to information and communications technology. The authors conclude that the potential effectiveness of the Act is limited by two inherent weaknesses. Firstly the provisions are restrictive and selective in identifying punishable computer related conduct. Secondly the absence of appropriate definitions in the Act for certain vital technical terms which in ten are decisive in establishing the elements of the offences recognized by the Act has hindered the statute’s ability to adapt to changing circumstances. The main objective of the study is to propose possible amendments to the identified provisions which may be considered in any future legislative initiative with reference to model laws and similar legislation in comparative jurisdictions such as U.K USA and academic opinions.

Cybercrime or Computer Crime

The term ‘cybercrime’ is one of a number of terms used to describe the use of digital technologies in the commission or facilitation of crime.57 As its name suggests it is a crime which has been done by using computer or computer technology. Computer technology may constitute instrumental value of computer and information together. Computer may represent the instrument of the crime.58 Internet or Cyber is one of the best results of the combination of computer and information thanks to the mixing technology. Cybercrime can be interpreted as ‘computer-mediated activities which are either illegal or considered elicit by certain parties and which can be conducted through global electronic networks’.59 The Oxford dictionary suggests that cybercrime are ‘criminal

activities carried out by means of computers or the Internet’. 60 Cybercrime refers to criminal activities where a computer or network is the source, tool, target, or place of a crime. However, all of these definitions are questionable with their adequacy in the application of existing cybercrime.

In short cyber crimes refer to the category of conduct which uses information networks as the tool of crime as opposed to computers per se. The term computer crime though used synonymously with cyber crime is limited to any conduct which is carried out using software and information stored in a computer-not necessarily a network. Though computers are used as the instrument in cybercrimes as well the narrower term of computer crimes does not necessarily include cybercrimes unless an inclusive interpretation is provided. Computers may be involved in any part of the cybercrime process such as manipulating the functions or operation of programs processing the data, altering data into a system, to altering the end result or output. Moreover as Reed points out "since the Internet is the environment that currently dominates any discussion of computers and their usage and, as the network of networks, facilitates connectivity between computers across the world, computers per se are not the sole object of concern, rather computers connected to other computers: 'cybercrime’". 61

It has been observed by the authors that the CC Act/SL is restrictively selective in its choice of offences. As the following discussion on several identified cybercrimes reveals the provisions of the Act appears to be restrictive in its application to the category of offences identified as cybercrime.

Hacking

Major risk to computer security is attacks of hackers. The basic notion of hacking is covered by the offence of unauthorized access to computer material. 62 ‘For the offence to occur the access to the computer material has to be unauthorized and the individual gaining access has to be aware that his access is unauthorized. There is no requirement for the intent to be directed at a specific program or file’. 63 The hackers break into others computer system without permission. These attacks have different names such as hackers, crackers, cyber terrorists, information warriors, cyberpunks and phone freaks. Those attacks make financial damage and harmful to the competitiveness of institutions and organisations.

Sections 3 and 4 of the CC Act/SL deal with unauthorized access to any computer or information held in any computer and unauthorized access to computers or information held in any computer with an intention to commit a crime respectively, although are applicable to hacking of a computer and information held there do not appear to apply to information stored in information systems in the cyberspace. Whilst the interpretation section of the Act defines computer as a device with information processing capabilities the same section defines a computer system as a computer or group of inter-connected computers, including the Internet. It is doubtful whether the term ‘computer’ so defined would cover a ‘computer server’ which is commonly referred to as a network of computer or a computer programs. Hence it is safe to conclude that any reference to network related data is represented by the term ‘computer systems’. Absence of the term ‘computer systems’ in section 3 and 4 rules out hacking of databases and information stored in domains which are not necessarily information stored in a ‘computer’. Even Section 5 of the Act which criminalizes unlawful and unauthorized modification or damage to any computer or ‘computer system’ does not cover ‘unauthorized access’ to such systems. Accordingly a hacker who uses his own computer to gain access into a protected database or any information stored in a computer system could not be made liable under this provision unless he engages in modification or damage. Under the Computer Misuse Act of 1990 in UK this anomaly was avoided by not defining the term ‘computer’. It is the conclusion of the authors that the more appropriate approach would be to include the term ‘computer system’ which covers computer as well as networks in sections 3 and 4 thereby covering the cybercrime of hacking as well. As the court observes in R v Strickland and R v Woods 64 ‘…it is essential that the integrity of those systems should be protected and hacking puts that integrity in jeopardy.’

Cyber Squatting

61 C Reed, J Angel (eds), Computer Law- The Law and Regulation of Information Technology, 6th edn, OUP 2007, p.554.
62 For example, In UK, Section 1, Computer Misuse Act 1990.
Cyber squatting refers to using, trafficking in or registering a domain name with the intention of taking advantage of the popularity of another company's trademark. These cyber squatters generally register these domains before the target company, thus forcing the company to buy the domain from them at a higher price. Cyber squatting comes from the word squatting, which describes the act of occupying a land, building or any other property without the knowledge or permission of the owner. In a sense, cyber squatting entails cyber squatters registering a company or a trademark for his domain name and forcing the company to buy the domain name by advertising it as the legitimate company site. In some cases, the domain name is used for posting derogatory remarks about the target company. The legitimate company's only option is to buy the domain name at ridiculously high prices.

Cyber squatting is a fast growing unfair trade practice conducted through cyber space which is not covered by the CC Act/SL. Unfair trade practices which resemble cyber squatting is considered as a violation of the provisions relating to trademarks and unfair competition and undisclosed information in the Intellectual Property Act No 36 of 2003 of Sri Lanka. The ability to interpret section 4 of the Act which criminalises the unauthorised access to any computer with the intention of committing an offence under any law (which includes Intellectual property Act) is restricted by the use of the term computer which does not represent domains.

**Phishing**

Phishing means that the mass distribution of emails that purport to originate from banks, credit card companies and electronic sellers. The mails typically request that the account holder needs to visit the bank, Credit Card Company or other website in order to refresh their personal and other details in order to update their account. The more sophisticated variants of these mails use logos and wording associated with the legitimate company in order to cultivate the impression that the email is genuine. The account holders will be provided with a hyperlink that supposedly takes them to the company’s website where they can log on and enter the appropriate information. The hyperlink will direct them to a bogus website that looks identical to the legitimate company website which account holders are accustomed to using. Here they will log on and enter their details. The fraudsters thus gain access to the users' passwords and other security and authentication information, which can then be used to empty bank accounts or steal from credit cards.

According to Section 8 of the CC Act/SL unlawful or unauthorized interception of subscriber information or traffic data, to, from or within a computer or any electromagnetic emissions from a computer that carries any information is punishable. Although this section covers the offence of sniffing which relates to gathering of information by monitoring of data travelling over a network it does not adequately cover the conduct mentioned above.

Accordingly by restricting the application of the CC Act/SL to some cyber crimes the CC Act/SL has failed to be an effective response to the advancement of technology.

**Device or computer**

Most of issues with computer crimes finally lag with the problem of interpretation of device or computer. This is where the place computer and cyber crime starts and its criminal proceedings end up. Therefore it is important to distinguish the terms device and computer and select a final choice.

In the phenomenon of computer technology a device is a component or a unit of hardware. This clearly makes distinguish with software and hardware. In this sense, now we can focus into only hardware rather software of computer technology. However it does not necessarily mean that there is no connection between software and hardware. In fact, software is an important part of hardware and therefore device. Device could be found at outside or inside the casing/covering or housing for the computer which consist of processor, memory, and data paths, that is capable of providing input to the computer or of receiving output or both of them. If so it is a hardware unit, it may be or can include keyboards, other units connect to the keyboards, separate or inbuilt mouses, display monitors, separate or inbuilt hard disk drives, printers, scanners, CD-ROM players, audio speakers and microphones, and other hardware units which are not mentioned here but need to use with a hardware. As far as they are not inbuilt, these devices considered as the category of peripheral devices as they are separate from the main computer and the operation of device depends on the computer connected. Most devices require a software called device driver which is a program that executes or controls a particular type of device. This shows that a device is also relied upon the operation of software. Therefore computer is also a kind of device or itself a device.

Now it is clear that computer is a device as a target of computer crimes and computer is a device which can be used as a tool of computer crimes. Computer which is considered as a target of computer crimes target computer networks and devices attached to computers or works individually without getting any support from another

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65 Chapter XXXVIII of the IP Act 36/2003-SL.
computer. Example for these computer crimes- Computer viruses, Denial-of-service attacks, Malware of which all target computers themselves or devices.  

When computer being used as the tool, crime engages with less technical expertise. Whatever the technological knowledge, these crimes arise the importance of discussion of computer or device they used as a tool. Crimes which come up with computers as tools have already existed. For example, fraud, theft. The same criminals have simply been given tools which boost their potential pool of victims and make them all the harder to trace back and arrest. With an acceptable level of interpretation of computers in these crimes this task is not much harder. It is the recommendation of the authors that the CC Act/SL use the term device in place of the term computer in defining the offences identified by the Act.

‘Unauthorized Access’
The CC Act/SL uses the term unauthorized access throughout the act without providing a definition. According to Sections 3 and 4 of the Act, actus reus of the offences comprises of ‘any act done in order to secure access’. This is wider in its application than its British counterpart which refers to actus reus of unauthorized access as ‘causing a computer to perform any function to secure access’. Both Phrases seem to encompass a wide array of activities including but not limited to acts such as sending of virus warms etc. According to the Section 4 of the SL Act mere turning on of a computer satisfies ‘access’ for the purpose of the section. However other than that no clear definition is provided thereby opening the term for various possible interpretations from quite narrow to very broad. For want of clear statutory or judicial guidance it is recommended in this regard that US judicial decisions relating to ‘access’ be observed and suitably adopted. In State v. Allen Webster’s definition of “access” as “freedom or ability to obtain or make use of” was adopted. In two other cases namely America Online v. National Health Care Discount Inc.(NHCD) and State v. Riley the same dictionary meaning was given a wider interpretation encompassing a wider array of conduct. In NHCD it was held that such includes instances when someone sends an e-mail message from his or her own computer, and the message then is transmitted through a number of other computers until it reaches its destination, the sender is making use of all of those computers, and is therefore “accessing” them.

The absence of an attempt at defining circumstances which make access ‘unauthorized’ has also given rise to interpretative issues. The UK Act in Section 17 (5) provides that access is unauthorized if (a) he is not himself entitled to control access of the kind in question to the program or data; and (b) he does not have consent to access by him of the kind in question to the program or data from any person who is so entitled. Even this definition is not conclusive. According to Reed and Angel the definition does not answer the question whether presence or absence of security measures in the victim computer or the network is relevant to the inquiry. The European Convention of Cybercrime in Article 2 states that a party may require that the offence be committed by infringing security measures. It is recommended that any future legislative initiative take such issues and interpretations into account in amending the provisions to respond to the fast growing technology.

Conclusion

Although the Computer Crimes Act of Sri Lanka was designed as part of a major collaborative effort with expert participation drawing on international experience, today, after seven years of operation the inability to make necessary timely amendments has failed the Act in its capacity to stand up to the challenges posed by the rapid growth of technology.

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71 Section 1(a) of the Computer Misuse Act of 1990 of UK.
72 917 P.2d 848 (Kan. 1996).
73 121 F. Supp. 2d 1255 (N.D. Iowa 2000).
74 846 P.2d 1365 (Wash. 1993).
75 Id. at 1272-73.
76 C Reed, J Angel (eds), Computer Law- The Law and Regulation of Information Technology, 6th edn, OUP 2007, p.568.
advancement of information and communications technology. The restrictive approach towards definition of vital terms such as ‘computer’ and absence of definitions for elements of the crimes such as unauthorized access has severely limited the scope of its application in face of specific developments in activities relating to communications technology. In light of the rapid daily growth of the information and communications technology it is imperative that any future legislative initiative address such weaknesses considering the discussion attempted by the paper.

References


Mediating & Resolving Oil and Gas Dispute Through Alternative Disputes Resolution (ADR)
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Abstract
The study attempted to explore ways of resolving oil and gas disputes especially environmental issues such as oil spillage, gas flaring, and environmental degradation. (ADR) has its origin in African laws, thus, the concept is not a new wine in an old bottle to African people. The evolution of ADR has been discussed extensively in relations to African context. Therefore, this study further attempts to explore the limitation in environmental litigation through the courts in the oil and gas sector in Nigeria due to the over bearing influence of the multinational companies and the incessant support enjoyed from the Government. The problem examines in this study includes the issue of marginalization, deprivation; neglects and environmental degradation while the research objectives analysed the culpable obstacle that inhibit the Niger Delta oil and gas operations. While the significance of the study lies in its attempt at identifying the importance of ADR as the most viable, cheaper and speedy way of settling disputes, as such disputes have the potential to aggravate and destabilize global peace and economy. Thus, the findings show that there is persistent rise of conflict in the region as a result of corrupt practices, lackadaisical attitudes, weak government policies, fraudulent practices among community leaders. This research concludes, in view of the findings, by suggesting a constructive resolution of ADR as a means of establishing a long-lasting peaceful coexistence between the communities in Niger Delta.

Keywords: Disputes, Environmental degradation and Neglects.
Safeguards of Refugees in Sri Lanka: Law and Action

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ABSTRACT

Refugee protection is one of the critical challenges in the present world. When one observes the statistics of refugees, they all show that human beings and even animals also have become refugees, because the causes of the production of refugees are mainly climate change and armed conflicts. According to these records, Sri Lanka is also a refugee producing and refugee receiving country. Due to the 30 year period of civil war situation, Sri Lanka produced many internally displaced persons who became refugees in other countries, especially in India, United Kingdom and Canada. However, after the end of the armed conflict, those refugees are now returning and are being re-settled in the country. This study gives attention to the refugee laws in Sri Lanka and discusses the applicability of international refugee laws to Sri Lankan domestic law situation. Specially, Sri Lanka has not signed and ratified International refugee law Conventions. Thus, it is a challenge to find out proper regulations and laws to regulate refugees in domestic situations. There is no direct law to regulate refugee status. Therefore, this study is discussing how to regulate refugee status in Sri Lanka, how it must improve and how it can be worked out practically in Sri Lanka. Most of the South Asian countries also have not signed and ratified the international refugee law conventions. Therefore, it remains a challenge to implementation of refugee laws and protection of refugees in South Asian Countries. Most of the South Asian countries are producing refugees and bear the refugee producing status and some other countries like India and Pakistan bear refugee receiving status. This study will give attention to the issues in respect of regulating the refugee laws in the legal system and enforcement mechanism within the territory of Sri Lanka.

Key words: refugees, conventions, legislations, domestic law, international law

I. INTRODUCTION

World’s largest atrocities committed during the period between World War I and World War II took place in the Armenia. A population of 2 million of Armenians was decimated. Later it was recognized as the first genocide of the 20th century. Methodical persecution under the Ottoman Empire meant that half of those populations were dead by 1918 and hundreds of thousands were homeless and stateless refugees. Alarmingly, by the end of Second World War, there were more than 40 million refugees in Europe alone.77 After that, there were more armed conflicts specially in Europe and other states. There were more refugees produced because of armed conflicts. Article 14(1) of the Universal Declaration of Human Rights states that everyone has the right to seek and to enjoy asylum in other countries against risk of persecution in one’s own country.

This study examines the international instruments for refugees and national legislation for refugees in Sri Lanka. Sri Lanka has not signed and ratified the international convention relating to the status of refugees. In these circumstances, it is important to find out the domestic laws in Sri Lanka relating to the refugee law. Therefore, this study firstly discusses the international instruments relating to the refugees. Sri Lanka has been a producing country of refugees due to the long lasted civil war in the island and, as such, the importance of the laws governing refugees within the territory has greater implications. And, in the same time Sri Lanka is a receiving country of refugees. Then this study discusses the domestic laws applicable for refugees in Sri Lanka and finally it examines the new dimensions of the problem and measures that should be implemented in respect of refugees compared to other South Asian countries and other developed countries.

The objective of this study is to find out refugee laws under international law and particularly the related laws in Sri Lanka. The rise of the number of Refugees is a core problem for the whole world and it is a challenge in the regional level and for individual nation states too. The scope of this study extends to finding the refugee laws in Sri Lanka while the country has not signed and ratified the international refugee conventions. Further there is a

lack of examination of the adequacy of the existing refugee laws in Sri Lanka. An objective of this research is also to fill in this gap in the existing literature.

Then this research will move to find out the mechanism employed in dealing with issues relating to refugees in Sri Lanka. It will also examine the scope and extent of applicability of existing international refugee laws to refugees in Sri Lanka and bring the refugee law violators before justice. The paper suggests that Sri Lanka should sign and ratify these international instruments forthwith.

II. INTERNATIONAL INSTRUMENTS FOR REFUGEES

It is in this background that in 1951, the Convention relating to the status of refugees was introduced by the United Nations Organization for the safeguard of refugees. In 1967, the protocol to the Convention Relating to the status of Refugees came into existence. It includes measures relating to co-operation of national authorities with the United Nations, information on national legislation, settlement of disputes, accession, federal clause, reservation for declarations, entry into force, denunciation, notification by the Secretary General of the United Nations and deposit in the archives of the Secretariat of the United Nations.

There are two other important legal instruments for the protection of refugees in force. Those are the 1969 Convention of the Organization of African Unity which governs aspects peculiar to refugee problems in Africa and the 1984 Cartagena Declaration on Refugees in Latin America which supports persons fleeing conflict as refugees. And most importantly the United Nations High Commission on refugees (UNHCR) was also established to protect refugee rights throughout the world conflicting regions.

Now the situation has aggravated and because of the environment pollution, there are lots of refugees due to environment catastrophes. Many parts of the world are engulfed in armed conflicts and very often natural disasters such as tornados, floods, tsunami, cyclones, sea level rising and nuclear disasters ravage regions of populations causing severe infrastructural and human disasters. These manmade and natural disasters result in people helplessly reducing to nothing but refugees in thousands each year. Therefore the refugee problem has become a major problem in the world threatening diplomatic, political and social relations within states.

III. SRI LANKAN REFUGEES

This study’s main focus is on the Sri Lankan refugee problem and safeguard measures in respect of the refugees in Sri Lanka, especially the national refugee laws in Sri Lanka. Due to the 26 years of internal war between state forces and the Liberation Tigers of Tamil Eelam there were large numbers of Sri Lankan refugees. In the Northern and Eastern area of the country, there were lots of civilian casualties at the final months of the war and it rendered a huge number of civilians as internally displaced persons and many others fled the country as refugees seeking asylum in other countries.

The Refugees returning to Sri Lanka declined by half by 2013: The United Nations Refugee agency or UNHCR states that the number of Sri Lankan refugees returning to the country dropped by nearly 51 percent during 2013. The UNHCR notes that the number of refugees that have been returning from various countries has been declining since 2011. They note that while 1,480 persons voluntarily repatriated to Sri Lanka in 2012, only 718 refugees returned to Sri Lanka in 2013. According to 2013 estimates of the UNHCR, there are 124,436 Sri Lankan refugees globally. The UNHCR adds that most of the refugees were returning from camps in the South Indian state of Tamil Nadu and that they had assisted over 5000 refugees in their repatriations efforts since end of the war in May 2009.

Most of the Sri Lankan refugees were the product of the three decade long war which compelled thousands of Tamils to flee the country for political reasons and majority of them are living in Canada, Australia, Germany, England and the United States of America. After the end of the civil war in Sri Lanka a considerable number of such expatriates are returning to the country re-setting.

78 WHO: Sri Lanka Tsunami Situation Report 22.01.2005
<http://www.searo.who.int/LinkFiles/Sri_Lanka_SRL22Ja n05.pdf> accessed 07/04/2014
IV. SRI LANKA AS A REFUGEE RECEIVING STATE

Sri Lanka is also acting as a refugee receiving country. For an example, more than 500 Pakistani Catholics have sought refuge in Sri Lanka and the Church has appealed to the Government to provide support to these people. The Pakistanis including families are staying in pre-dominantly Catholic areas such as Negombo and Maggona and in and around Mount Lavinia and Moratuwa.79

Further, due to increasing sea level in the world, consequent to global warming and dilution of glaciers, Ireland and Maldives are two countries threatened by loss of its islands and a considerable part of coastal belt. In these circumstances, Maldivian government is planning to buy new islands from Sri Lanka or lands from India and send affected Maldivians to Sri Lanka or to India in view of the suitability of environmental conditions and compatibility of cultural backgrounds and lesser density of population. Therefore, Sri Lanka could also possibly be a receiving state of refugees.80

V. LAWS FOR REFUGEES IN SRI LANKA

Sri Lanka has not signed and ratified any international refugee law Conventions such as 1951, Convention to the Protection of Refugees and its 1967 Protocol. Even Bhutan and Afghanistan also have not signed and ratified the same. Therefore in Sri Lanka, there is no enactment to implement the 1951 Convention for the Protection of Refugees and as such there are no domestic legislation to protect refugees.

However, the law relating to human rights protections in Sri Lanka can be used to protect refugees. A person seeking for asylum and refugee status may file a human rights action in Supreme Court of Sri Lanka. Also there is a Human Rights Commission to safeguard human rights. Any person may go to the Human Rights Commission and lodge a complaint for the protection of their human rights. Further, there is an ombudsman to protect human rights of government servants. Any person can complain to Ombudsman of any alleged violation of human rights.

The Immigration and Emigration Act No. 20 of 1948 provides the law governing the immigration of people into Sri Lanka and therefore in regard to the issue of refugees this law plays a major role. It has been amended by Act No.16 of 1955, 68 of 1961, 16 of 1993, 42 of 1998 and 31 of 2006. As its long title provides this Act is to make provision for controlling the entry into Sri Lanka of persons other than citizens of Sri Lanka, for regulating the departure from Sri Lanka of citizens and persons other than citizens of Sri Lanka, for removing from Sri Lanka undesirable persons who are not citizens of Sri Lanka, and for other matters incidental to or connected with the matters aforesaid.

This Act specially includes provisions for the refugees and asylum seekers who come to Sri Lanka and who are going from Sri Lanka to another country. More than that, the people who are doing illegal migration is removing from this Act. If some people tried come to Sri Lanka without any permission then it will be problematic. This Act has introduced penalties for those persons. So this Immigration and Emigration Act is the major Act in Sri Lanka to control the illegal entries to Sri Lanka.

VI. UNHCR IN SRI LANKA (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES)

United Nations High Commission for Refugees is the main organization for the protection of refugees in the world which comes under the United Nations Organization. For the many problems of refugees all around the world, the UNHR is able to get involved in assisting asylum seekers and refugees in conflict situations. Most of the countries have not signed and ratified the 1951 Convention for the Refugees. Therefore, UNHCR branches in many of those countries cooperate with the governments of the respective countries to promote protection of refugees. Not only with governments, but also with NGOs and other stakeholders, the UNHCR is working to protect and assist refugees. This way, it helps to seek comprehensive solutions for internally displaced persons and protected refugee situations.81

More importantly the UNHCR’s Representative in Sri Lanka, Michael Zwack, on World Refugee Day, 2013 also stated that “UNHCR has been working in Sri Lanka for over 25 years. We were initially invited by the Government of Sri Lanka to assist with the mass repatriation of Sri Lankan refugees from India in 1987. In addition, we help Sri Lankan refugees who are abroad to return home, if they wish. Importantly, under an agreement signed with the Government of Sri Lanka, the authorities cooperate with UNHCR to receive asylum-seekers from other countries and determine whether they qualify to be refugees.  

When a resettlement country that is willing to accept a refugee has been identified, UNHCR handles all the formalities and documentation with the respective authorities and guides refugees through the process, making sure they complete all the steps required. UNHCR also negotiates with other agencies to issue travel documents and book flights for refugees who resettle.”

Therefore it is confirmed that UNHCR in Sri Lanka is practicable and it is working well in Sri Lanka. Especially, Sri Lankan government makes arrangements with UNHCR to protect refugees in Sri Lanka and to control the situations. For example, according to the agreement between Sri Lanka and the UNHCR, the Sri Lankan government does not have the mandate to deport any refugee who is registered with the UNHCR. Under an agreement signed with the Government of Sri Lanka by UNHCR, the authorities cooperate with UNHCR to receive asylum-seekers from other countries and determine whether they qualify to be refugees.

VII. COMPARATIVE JURISDICTIONS

In India there are no direct laws governing refugees. However there are several other legislations relevant: The Registration of Foreigners Act, 1939, the Foreigners Act, 1946, and the Foreigners Order, 1948 are primary documents dealing with foreigners. Further, there is Seventh Schedule of the Constitution of India which grants constitutional protection to foreigners/refugees. But, in practice, refugees are cared out by the UNHCR branch in India.

In Bangladesh too, there are no direct laws for the protection of refugees. Pakistan, Nepal, Bhutan and other South Asian counters also have not signed and ratified the 1951 Refugee Convention and its protocol in 1967. Still Afghanistan is in the process of implementing these refugee laws. However, to the question why Afghanistan has signed and ratified this international refugee convention, it should be answered that Afghanistan is the largest refugee producing country in the world. Thus, the country needs special protection to civilians.

There are no direct laws for the protection of refugees also in the other South Asian countries. Every country is using the immigration and emigration laws or foreigners’ law to deal with these issues. Further, there are human rights laws for the protection of refugees. On the other hand, UNHCR is working well in these countries and arrives at agreements with state governments in promoting refugee laws in the country. Due to the growing number of conflict situations all around the world, it is mandatory and a global responsibility of peoples of each country to pass laws to protect refugees and asylum seekers as this is based on higher principles of democracy and liberal freedom of the persons to whatever original country they are based on. Every country must have internal laws to regulate refugees well. Every government must protect refugees because no person is willing to be a refugee and they are seeking refuge in a country away from one’s native country. Refugees may often be professionals in many areas and it is beneficial for the receiving country to employ these professional refugees in their country and use them for the development programs etc.

Delivering an order, the Court of Appeal in Sri Lanka recently withdrew its interim order suspending deportation of Pakistani asylum seekers in Sri Lanka. Supreme Court of Sri Lanka also confirmed this Court of Appeal order and dismissed the appeal. This shows that the attitude of the judiciary in the country which
a dualist approach to international law, is not favorable to refugees/asylum seekers who travel to Sri Lanka in search of refuge/asylum.

Abrar and Malik in the article titled “Towards National Refugee Law in South Asia” states that, “There is no equivalent development in Asia in terms of treaties not least as a number of Asian states are not parties to the Refugee Convention. In addition, there are examples of refugee protection through national law in the region.”

National/domestic laws must be implemented including the procedure to receive refugees and re-settle the refugees in a systematic manner. And all the refugee rights also must be included in the internal laws. Further, domestically each country should guarantee to their citizens the rights and freedoms expected to be safeguarded by the concept of democracy. Armed conflicts must be abstained from and environmental pollution must be reduced to prevent natural disasters.

The South Asian Countries have not signed, and ratified the UN convention due to several festering reasons: these countries are developing economies and often tend to be hit by terrorist outfits; there are problems of resource mobilization and sometimes the rights under the convention may be abused by refugee groups in the developed countries who are collecting funds for terrorist activities. Further the convention does not address the south Asian regional perspective and economic migration problems.

VIII. CONCLUSION

As observed above it can be concluded that though Sri Lanka is not a country which has signed and ratified the major international instruments relating to admission and protection of refugees in the jurisdiction of the country, there is an effective mechanism to address refugee issues due to the presence of UNHCR in the island. On the other hand, the existing laws including the Constitutional provisions for Fundamental Rights and immigration laws can be used to safeguard the interests of refugees. However, given that the country bears the international responsibility to protect refugees/asylum seekers as a fully fledged Democracy, it is high time that Sri Lanka sign and ratify the international Refugee law conventions and treaties and display a better image in the Asian region as a protector of Human Rights and Fundamental Human freedoms.

REFERENCE:


86 Abrar CR, Malik S (eds.), Towards National Refugee Law in South Asia, Dhaka: University of Dhaka Press, 2003. The ASEAN Human Rights Declaration, nonetheless, includes at Principles 14 and 16 first a prohibition on torture and secondly a right to seek and receive asylum in accordance with national law and international agreements. The ASEAN Intergovernmental Commission on Human Rights has a mandate in its terms of reference to promote the full implementation of ASEAN instruments related to human rights.
Operation of Zoos: A Comparative Note of Japanese and Malaysian Legislation

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Abstract

This paper compares the operations of zoo regulations in Malaysia and Japan with special emphasis on animal welfare. Zoos are a major tourist attraction and house various wildlife species either for display purposes or for animal performances. The main concern in this regard is the welfare of the animals in terms of their enclosures, diet, health, etc. The legislations of the two countries are examined to compare their similarities and differences. The methodological approach of this paper is purely legal and is limited to provisions in the relevant statutes. This study concludes that Malaysia has more comprehensive regulations on zoo operations compared to Japan.

Keywords: Zoos, animal welfare, Japan, Malaysia, law

INTRODUCTION

This paper compares zoo operation and animal welfare legislation in Malaysia and Japan as two countries on different ends of the development spectrum. While Malaysia is a developing country Japan has achieved developed status it will be interesting to observe whether legislation on wildlife and in particular animal welfare in zoos is similar despite this difference. Alternatively, the issue is whether a developed country possesses superior legislation on wildlife compared to its developing counterpart.

The relevant legislation on zoo operations and animal welfare in Malaysia is the Wildlife Conservation Act 2010 (Act 716). However, it relates more to protection of wildlife in general as only a few of its provisions refer to zoo operations (Kamal, 2014). The Act empowers the Minister to make regulations which resulted in the enactment of the Wildlife Conservation (Operation of Zoo) Regulations 2012. To begin, Act 716 will be reviewed in terms of the relevant provisions on zoo operations. Under that Act “wildlife” means “any species of wild animal or wild bird, whether totally protected or protected, vertebrate or invertebrate, live or dead, mature or immature and whether or not may be tamed or bred in captivity”. This broad definition includes wildlife in captivity and therefore it certainly includes animals kept in zoos.

In the case of Japan, there are several legislations concerning zoo operations and animal welfare (Shoji, 2007). A legal framework for animal welfare can be found in Law No.105 of 1973, the main purpose of which is to prevent cruelty to animals and ensure the suitable treatment and protection of animals. A statute entitled “Standards relating to the Keeping and Custody of Animals for Exhibition etc 1973” has been enacted for zoo operations. Other relevant legislations are the Wildlife Protection and Hunting Law, the Law for the Conservation of Endangered Species of Wild Fauna and Flora, the Nature Conservation Law, and the Natural Parks Law (Takahari, 2009).
CONCEPTUAL DEFINITIONS OF ANIMAL WELFARE

The concept of wildlife has differed from early times to the present day. At the early stages of interest in wildlife, the term was restricted to animals that could be hunted for food or sport and to vertebrates or animals with a backbone namely mammals and birds. The term transformed over time to include vertebrate as well as invertebrate animals. The current definition has been broadened to include plants (Yarrow, 2009) and, in the words of Daniel L. Hodges (2010), wildlife is a collective name for all living things. This article adopts the broad meaning of the term “wildlife” and includes all undomesticated animals and plants. The researcher opted for this definition in line with what is prevailing at the international level as in CITES. The main subjects of this convention are the endangered fauna and flora species, and at the domestic level in Japan this is reflected in the Law for the Conservation of Endangered Species of Wild Fauna and Flora which is one of its major laws on wildlife. Accordingly, wildlife in the context of this article refers to all animals and plants not domesticated by humans including wild mammals, reptiles, birds, etc., and different kinds of plants. These could be found all over the earth such as in mountains, deserts, forests, oceans, seas, rivers, valleys, and puddles as well as in coastal waters and offshore (Hirata, 2005). This is also justified with the establishment of the marine protected areas (MPAs) which are defined as “any area of intertidal or sub-tidal terrain, together with its overlying waters, and associated flora, fauna, historical and cultural features, which has been reserved by law or other effective means to protect part or all of the enclosed environment” (Hirata, 2005).

In the area of wildlife protection policy-making there is a distinction among conservation, preservation, and management. Conservation relates to the effort toward the wise maintenance and use of wildlife as natural resources so as to make them available for future generations; in other words, leaving wildlife alone without human disturbance or manipulation. Preservation means doing something for wildlife to ensure it is protected, unspoiled, and untouched by humans (Yarrow, 2009). That is to say, preservation aims at maintaining the integrity of the ecosystem as exemplified by nature preserves or wilderness areas. On the other hand, management means controlling, directing, or manipulating wildlife to increase, reduce, or stabilize its population (Knight, 2007). Management deals with conservation based on science (Sano 2012). Conservation is said to be wider in scope and covers both preservation and management. On the other hand, the protection of wildlife relates to its conservation, preservation, management as well as its welfare, i.e., ending the suffering of wildlife. Thus the article is on the protection of wildlife in terms of its conservation, preservation, management, and welfare.

MALAYSIAN LEGISLATION ON WILDLIFE PROTECTION

One of the salient features of Act 716 is the requirement for permits and licences for the conservation and keeping of wildlife (Hassan, 2015). Although the Act refers to individuals, it may also apply to entities or zoo operators and is covered by Section 10. Section 10(1) states that no person shall operate a zoo or operate a wildlife exhibition unless he holds a permit granted under this Act. Further, sub section (2) provides that where the zoo operations or wildlife exhibitions involve any totally protected wildlife, the person shall obtain a special permit. These are the only specific operations regarding zoos in the parent Act. Further detailed provisions regarding zoo operations are spelled out in Regulations 2012.

Any person who operates a zoo or wildlife exhibition without a permit commits an offence and shall, on conviction, be liable to a fine not exceeding RM70,000 or to imprisonment for a term not exceeding 3 years or both (s.66). Further, any person who uses any totally protected wildlife for his zoo or wildlife exhibition without a permit commits an offence and shall, on conviction, be liable to a fine not exceeding RM100,000 or to imprisonment for a term not exceeding 2 years (s.72(1)).

The Act also provides for animal cruelty which in this context also applies to wildlife in zoos. It is an offence for any person to commit an act which can amount to animal cruelty such as beating, torturing, neglecting to supply sufficient food or water or keeping or housing any wildlife that cause unnecessary pain or suffering including housing any wildlife in premises which are not suitable for or conducive to the comfort or health of the wildlife. The penalty on conviction is a fine not less than RM5,000 and not more than RM50,000 or to imprisonment for a term not exceeding 1 year or both.

In Malaysia, there are 12 zoos and 21 permanent exhibitions being operated currently. Figure 1 shows the list of zoos and wildlife parks operated in Peninsular Malaysia.

Figure 1: List of zoos in Peninsular Malaysia
Malaysian Regulations on the Operations of Zoos

The main purpose of the Wildlife Conservation (Operation of Zoo) Regulations 2012 is to ensure the welfare of the animals or wildlife kept captive in zoos (Hassan, 2015). In ensuring such welfare, regard must be given to matters such as enclosures, cages, food, upkeep, health, etc of the wildlife. Under the 2012 Regulations, zoo operator means any individual, statutory body, company, association, or local authority owning or operating a zoo while zoo refers to any area or premise which keeps or places 50 or 100 or more wildlife whether for conservation, education, research, or recreational purposes, and is open to the public.

The 2012 Regulations repeat the provisions of the parent Act which requires a permit for zoo operations. Enclosures or cages are an important aspect in ensuring animal welfare in zoos and the Regulations state explicitly that their design must be appropriate to the natural behavior and basic needs of the wildlife. In fact, the design of the enclosure must first be submitted to the Director-General for approval. The Schedule to the Regulations provides the specifications of the enclosure such as the category of species it will house and its size and height. For reptilia and amphibians such as crocodiles and snakes, an additional condition is to provide a watery enclosure. Figure 2 shows the enclosure sizes for mammals as specified in the 2012 Regulations.

Figure 2: Enclosure Sizes for Mammals

<table>
<thead>
<tr>
<th>Species category</th>
<th>Night stall size for one mammal</th>
<th>Night stall size for one mammal</th>
<th>Night stall size for one mammal</th>
<th>Minimum size for exhibit area (m2)</th>
<th>Height for close exhibit (if applicable (m))</th>
<th>Minimum size for non-exhibit area (m2)</th>
<th>Increase in size of the night stall/area for each additional individual (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very large carnivores (lion, tiger, cheetah)</td>
<td>4.0</td>
<td>3.0</td>
<td>3.0</td>
<td>500</td>
<td>4.0</td>
<td>50</td>
<td>10</td>
</tr>
<tr>
<td>Medium-large carnivores (leopard, panther, jaguar)</td>
<td>3.0</td>
<td>2.0</td>
<td>2.5</td>
<td>200</td>
<td>4.0</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>Large bear species (Asian black bear, giant panda)</td>
<td>4.0</td>
<td>3.0</td>
<td>3.0</td>
<td>300</td>
<td>4.0</td>
<td>30</td>
<td>10</td>
</tr>
<tr>
<td>Rhino, hippo, tapir</td>
<td>5.0</td>
<td>4.0</td>
<td>3.0</td>
<td>500</td>
<td>3.0</td>
<td>50</td>
<td>10</td>
</tr>
</tbody>
</table>
Large primates (orang utan, chimpanzees, gorillas)

<table>
<thead>
<tr>
<th></th>
<th>Age</th>
<th>Sex</th>
<th>Weight</th>
<th>1000</th>
<th>-</th>
<th>100</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elephants</td>
<td>8.0</td>
<td>6.0</td>
<td>6.0</td>
<td>1000</td>
<td>-</td>
<td>100</td>
<td>5</td>
</tr>
</tbody>
</table>

Malaysian Guidelines on Zoo Standards

The Ministry of Natural Resources and Environment has also issued the ‘Guideline of Malaysian Zoo Standards’. Although it has no legal capacity, a court may take the guideline into account in deliberation in any given case. The guideline provides, among others, a zoo management plan, inputs or research on wildlife, veterinary services, conservation programmes, information for the public, visitors’ facilities, emergency action plan, wildlife welfare, ensuring natural behavior and social life or wildlife and breeding control management. It takes into account all “best practices” as implemented in many zoos around the world. For example, the zoo management and emergency action plan are essential in ensuring the safety of the zoo animals as well as visitors.

JAPANESE LAW

Japanese wildlife management has attracted considerable criticism (Knight, 2007). The system is often described as being ad hoc and piecemeal and ineffective in protecting endangered species and their habitat. Likewise, existing regulations on zoos are also not comprehensive. The only standard or rather a guideline for this purpose is Law No. 105 of 1973 on “Standards relating to the Keeping and Custody of Animals for Exhibition etc 1976” which emphasizes on animal exhibitions. The management of zoos seems to fall within the control of their operators who often create their own guidelines. There are many zoos in Japan but the famous ones in the Tokyo Prefectures are the Edogawa City Natural Zoo, Inogashira Park Zoo, Tama Zoo, and Euno Zoo while the Osaka Prefecture has its Tennoji Zoo and Satsukiyama Zoo.

Early legislation on animal welfare did not refer to animals housed in zoos but to overall activity related to wildlife such as hunting. The key legislation in Japan is the Wildlife Protection and Hunting Law (WPHL) which seeks to protect birds and mammals and to control pests through the implementation of wildlife protection projects and hunting control. The legislation lists out about 50 game species that are allowed to be hunted while the rest are protected species. The Law also designates hunting and non-hunting zones.

The issue of wildlife sustainability is linked to the development of national parks in Japan. Due to the demand from tourism, national or natural parks have been built in many parts of Japan. As a result, it has wiped out many wildlife and their habitats. There are 28 national parks and 55 quasi national parks which cover about 14% of the land area in Japan. The Natural Parks Law of 1957 superseded the Natural Park Laws of 931. Criteria were set to underline the selection of natural parks which emphasize on scenic beauty and not on the conservation of wildlife. Some of the natural parks however do keep wildlife but not in large numbers. In short, the legislation cannot be said to adequately address the conservation of wildlife in Japan.

Modern regulations on zoo operation and animal welfare in Japan can be found in several legislations, the primary legislation being the Protection and Control of Animals (Law No.105 of 1973). Although it does not specifically provide for animal welfare in zoos, the provisions are applicable to such a situation. In general, the Law states that all people must not only refrain from killing, injuring and inflicting cruelty upon animals, they must also treat animals properly, taking their natural habits into account (Article 2). This provision is also applicable to operators in the keeping and treating of animals in zoos. Interestingly, to create awareness among the Japanese on good treatment of animals, the Law specifically provides for a special occasion called “be kind to animals” week (Article 3) during which the government and local public bodies are required to hold appropriate functions (Article 4).

The Law also obligates the animal owner to ensure its health and safety in a proper manner (Article 4). Likewise the Law requires the local authorities to regulate the methods concerning the care and custody of animals. In this regard, zoo operators have the same obligation as they are mostly located in local authorities, prefectures, and cities. Interestingly, this Law gives special emphasis to dogs and cats as Articles 7-9 specifically deal with these two animals. The Law imposes a financial penalty of not more than 30,000 yen on those who ill-treat or abandon their animals.
There is a section entitled the “Standards relating to the Keeping and Custody of Animals for Exhibitions” (Notification No. 7 - February 10, 1976). The standards outlined are not comprehensive and have many loopholes. For example, there are no provisions on the standards, measurements, or inspections procedures in ensuring the welfare of animals in zoos (Gripper, 1996), and operators make their own guidelines in managing them. In December 1976, a published a set of guidelines was issued for the keeping of animals for display purposes. The guidelines however are very small standards of signs which state the enclosures sizes as:

<table>
<thead>
<tr>
<th>Animal</th>
<th>Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bear</td>
<td>4x4x3 meters</td>
</tr>
<tr>
<td>Lion</td>
<td>3x4x3 meters</td>
</tr>
<tr>
<td>Hyena</td>
<td>2x3x3 meters</td>
</tr>
<tr>
<td>Gorilla</td>
<td>5x5x3 meters</td>
</tr>
</tbody>
</table>

Enclosures are accommodations for the animals and they must be appropriate to their habitual natures and behavior. The author observed during his visit to Tennoji Zoo, Osaka in 7 August 2014 that the animal enclosures were of various sizes. Although some of the enclosures were rather small for the animals, most were of proper sizes according to the normal standards as practiced internationally. However, the enclosures lacked the characteristics of the natural surroundings or habitats of the animals in the wild. Overall, there were not many animals in the zoo. One obvious example of non-observance of animal welfare was that the animals such as the black bear, white bear, spotted hyena, panther, and lion were housed alone without partners of the opposite sex which deprived them of natural cohabitation opportunities.

Conclusion

Based on the above, it can be concluded that Malaysia has more comprehensive regulations on zoos compared to Japan. Zoos in Malaysia are more regulated whereas those in Japan are more self-regulated. Malaysia has special regulations on zoo operators, namely the Wildlife Conservation (Operation of Zoo) Regulations 2012 which has detailed provisions aimed at protecting animal welfare. In addition, many aspects of animal welfare are provided for such as enclosures, diet upkeep, health, etc. Being a regulation, the Wildlife Conservation (Operation of Zoo) Regulations 2012 has legal standing and any violation can be subject to legal action including prosecution. The Japanese counterpart lacks regulations on zoo operations and consequently animal welfare is less protected. As mentioned before, zoos in Japan operate on the principle of self-regulation and individual prefectures have the liberty to make their own regulations on them.

Acknowledgement

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Natural Parks’ Development and Wildlife Conservation: A Comparative Study between Malaysian and Japanese Laws

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Abstract
This paper examines legislation pertaining to natural parks and wildlife. Natural parks and wildlife are important for development and conservation purposes. Both are used to enhance the tourism industry. The development of natural parks actually contradicts with the conservation of wildlife. Development of natural parks destroyed natural habitat and affected the wildlife. But wildlife is also needed at some natural parks to enhance its tourism appeal. I chose Malaysian law and Japanese law as comparative study in this paper. Both countries have legislation to such effect. It would be interesting to see how legislation of both countries manages the contradiction between natural parks’ development and wildlife conservation.

Keywords: Conservation, Natural Parks, Wildlife, Malaysia, Japan, Legislation
Dynamic Essential Modeling of Organization (DEMO) towards the Legal Domain

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Abstract
It is realized that, necessity of having optimal way of reducing complexity and inter-operable issues in any organization regardless of the domains. Today most of the enterprises strive for above said issues in their own level of complexity and inter-operable issues. The enterprise is supported tremendously with the development of suitable organizational and well optimized operational structure.

The legal domain is one of the driving forces of any government in order to maintain the peace among the nation. Still, the legal domain experiences the issues stated above due to complex courts regulations, domain procedures, individual rights, number of pending cases, number participations in a case and decision making with the evidence. The Dynamic Essential Modelling of Organization (DEMO) is a theory to construction and operation of any enterprises. The intended result is provided through the standard pattern of the transaction via series of communication acts. The legal domain is rich in more communicational agenda and more number of participants in a single case. Thus DEMO can be successfully applied due to optimal constructional pattern and the optimal operational acts. More than this, the DEMO provides re-engineering and re-designing options to the designers. Thus the judicial courts procedure and the organization can be restructured for the optimal output and it leads to break the barrier of complexity and inter-operable issues.

Key words: ontology model, judicial system, re-engineering

Introduction:
Nowadays, people prefer well organized organization in order to cultivate proper and sustainable outcome by aiming innovative, competitive, and flexible character of any enterprises in a certain domain. The organization may range from CSR to high level scientific research activities regardless of sectors and range of domains. The information and communication technology (ICT) plays vital role in sustaining of these different enterprises in different domains.

Complexity and interoperable issues is eye catching subject in any enterprises regardless of domains. The above stated two issues can make damage in data, dataflow, data security, information management, process management, communication management and organization management. Thus the survival and sustainable condition of the organization becomes hopeless. In Sri Lanka, the legal domain [1] still in crawling stage with very old manual case dealing system consuming more time in between tendering of case and the verdict. The complexity in legal domain gradually grows in many reasons; number of actors involving in the case, number of pending cases, hard procedure of case handling, hard and fast procedures of judicial system and government interventions such as power delegations. The entire above factors lead to produce interoperable issues in the legal system.

This paper tends to show how the legal system can be supported by DEMO in order to maximize the productivity efficiently through simplicity, comprehensiveness, consistent and concise.

Note
² It is series of communicational act in order to achieve an output which cause an effect on social world
³ Dynamic Essential Modelling of Organization developed by Professor Jan L.G. Dietz from the Netherlands.
**General Concept of DEMO:**

Basically the concept of DEMO\(^{89}\) is built up with information, actions, communications and organization (figure 1)\[^3\]. Since these four entities are common to all enterprises, it is more valuable to describe these entities through the aspects of the legal domain. This concept leads the construction and the operation flows of the courts in common.

**Communication:**

It is an atomic act in all kind of enterprises regardless domains. In legal domain more and more communication happens in order to the smooth information flow including information retrieval, process flow including from the tendering a case to judgment. In DEMO also, the communication is called as passing a piece of information about any selected subject to one actor to another actor with an intention and it should change the physical world. In another way it can be stated as *communicative act*. It is also can be said as coordination act. It is stated in figure 2.

Figure 2 illustrates the communication between two actor roles namely *initiator* who initiates the communication flow and the *addressee* who receive the communicational information. If a lawyer wants to tender a case, then lawyer represents the initiator actor role and the courts clerk takes the addressee actor role. Here basically a common tuple can be applied with \(<I, F, T>\) where \(I\) is the illocutionary kind, \(F\) is a fact and \(T\) for time period of the current action to be taken. Illocutionary kind may claim for any of these six; question, answer, request, promise, statement and acceptance. So, by including the initiator role and the addressee role DEMO introduced OER notation \[^3, 4\] of default tuple as \(<\text{Initiator} : \text{Illocutionary kind} I : \text{Addressee} : \text{Fact kind} F : \text{Time period} T>\). It is possible to describe the same with following example in the legal system. A binder in the courts asks to the registrar whether to start binding the case document.

Let’s apply the communication tuple \(<I : I : A : F : T>\) to the case binding scenario

\(<\text{binder} : \text{question} : \text{registrar} : \text{binds case document} : \text{now or near future}>\)

Then the reply from the registrar is “wait”. So we can apply the rule \(<I : I : A : F : T>\) for the scenario.

\(<\text{registrar} : \text{answer} : \text{binder} : \text{binding case document} : \text{later}>\)

So it is clear here, each conversation between two different actor role passes through the communication acts (coordination act) with the \(<I : I : A : F : T>\) tuple.

\(^{89}\) Mental picture of a certain subject.
Information:
Information is defined as piece of logical thinking which is useful enough to convey the messages in between two enterprises entities. The information transformation is vital part of legal case proceedings since it enables the smooth rest of the proceedings as well information retrieval from the data warehouse. In demo, it is categorized in to three levels depends on the usage of the information respectively forma, informa and per-forma [5] respectively. This is clearly shown in figure 3.

figure 3
According to the figure 3, forma[3, 5] is dealt the aspects of communication and information. In nutshell the data logical works such as verbal communication and perceiving, analysis, transmission of data, storing of data, copying of data, and retrieval of data or documents. In the courts system, always we have this kind of data level since most of the courts in Sri Lanka are manual case moving system. There are some dedicated courts employees[6] perform their data logical work in this level since it clearly deals with physical structure of the data / information. The in-forma defined as analyzing of the data by info-logical actions such as reproduction, deducing, reasoning and computing [3, 5]. It can be applied in the legal system too such as reproducing the case entry, timer period calculation, tax calculation, fine calculations, recording of words witness and later on either reproduce or retrieval and etc. the next information level is per-forma[3, 5]. Most of the business real actions which can affect the social world are taken place here. The information is being used effectively to do the decision or judging. Judicial system deals with this level since decision or judging is performed.

Action:
Performing action is most important in DEMO with the help of the informational system which is given above. In each level we have set of dedicated actions such as data logical action, informational action and business actions. The DEMO always focuses in the business actions since it is the real transactions of an enterprise. Case tendering, decision, case transferring, judgment are some of the core business actions in the legal system[7]. While, binding, copying, recording, delivering are some of the other supportive actions from rest of the levels. The business action can be divided in to two namely objective actions and inter-subjective actions. The objective actions are goal actions which provide the intended output (material or immaterial) of the enterprise such as tendering, payment of tax and decision making. Judicial system results immaterial outputs. The inter-subjective actions are necessary to perform the objective action. In DEMO it can be said as coordinating actions. So the coordination acts enable the agents or actors to commit the commitments towards particular event in the enterprise. In a legal domain to execute an objective action such as tendering a case there are other inter-subjective actions such as requesting, promising, stating and accepting should be fulfilled. A transaction is defined as a complete set of proper set of coordination acts and a production act in an order to produce an intended result.[3, 8]. The actor who initiates the transaction is called initiator and the actor who performs the actual objective action is called executor. A transaction is divided in to three different phases namely O-phase (order phase), E-phase (execution phase) and R-phase (result phase) respectively. It can be described with the following illustrated example.
This figure 4 clearly illustrates four important parts namely action worlds, OER phase, coordination actions and production actions, and the actor roles involving in this actions. There are two different actions to be taken in order to complete a transaction such as objective and inter-subjective actions, and are taken place objective world and inter-subjective world respectively. It is easy to describe the figure 4 using the tendering the case. Let’s...
assume, actor role A1 is lawyer and actor role A2 is courts clerk. The O-phase is prior to the real intentional execution happens. It is clearly noted that, coordination act request and promise is taken place. Lawyer starts to request to tender the case by request act. The clerk promises back to lawyer to tender the case by promising act. The acts like request and promise categorized under inter-subjective world since these acts not decide the mission goal but support to achieve the mission goal. The E-phase is said that execution act is taken place to achieve the mission goal. Soon after the tendering happens, the clerk states that “tender is finished” by state act. In replying to the state act lawyer accepts by accept act. Since state and accept not decide the mission goal again these acts categorized under the (inter-subjective action) inter-subjective world. The mission transaction is completed by accepting the statement from the executor.

Organization:
The organization describes about actor relationships, structural relationships, functional relationships, constructional relationships, inter-relationships between different organizational levels through the actors and compositional relationships. The complete organizational model can be described in to two different set of conceptual models namely white box (WB) model and black box (BB) model. A white box (WB) model describes the construction and operation of the entire system in deal. Let’s assume a case document from the view of a public; he knows only a bundled bound book is a case document. He understands only the components (viz. plaint, stamp duty, complaint and etc….) of case document but he doesn’t understand what is in the complaint, the wordings and etc. A WB is the interaction between components and elements (structural and constructional understanding) or the components in its environment and the advantage of WB as; one can focus some certain subject (elements or component) with ignoring unwanted parts. A black box (BB) model describes the functional perspective of a system in deal with considering neither construction nor operation. The figure 5 illustrates that BB model deals the input variables and output variables with their inter relationships. In legal domain, the functional perspective can be tendering, binding, submitting, moving and judging. Construction of the system depends on these functions the system. Thus, the BB decides the WB in fact. As an advantage, these WB (constructional) and BB (functional) models can be decomposed at any level, which enables easy to understand for the stakeholders. It can be described through the word “filing a case” and it can be decomposed in to tender, payment, binding, submission and deciding.

Dynamic Essential Modelling of Organization:
The DEMO methodology was started to carry out the engineering requirement purpose but later on it touched everywhere such business process, process management and organization management. It provides sets of diagramming technique with well-balanced solutions regardless of domains. Since the DEMO is enriched with Ψ (Psi) theory, the fulfillment of operation axioms (coordination acts, production acts, actors), transaction axiom (basic transaction pattern, standard transaction, cancellation pattern), composition axiom, and distinction axiom (communication, coordination and production). It consists of four ontology models described in the following table.

<table>
<thead>
<tr>
<th>Model</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Action (AM)</td>
<td>Specifies action rules that serve as guidelines for the actors in dealing with their agenda and each agendum has its own action rule</td>
</tr>
<tr>
<td>State (SM)</td>
<td>Specifies the lawful states of the Coordination World and the Production World: object classes, fact types and the ontological coexistence rules</td>
</tr>
<tr>
<td>Process (PM)</td>
<td>Specifies the lawful sequences of events in the coordination world and the production world: the (atomic) process steps and their causal and conditional relationships</td>
</tr>
<tr>
<td>Construction (CM)</td>
<td>Specifies the composition, the environment and structure of a system, the identified transaction types and the associated actor roles</td>
</tr>
</tbody>
</table>
Table 1

The following chapter describes the short example of initial step courts proceeding called case filing. Case filing consists of many sub activities such as case tender, stamp duty payment, binding, submission and decision respectively. For easiness the first two activities are taken in to the example case.

Example:
The brief scenario of case tending and payment of stamp duty are considered here. The lawyer collects and arranges the necessary documents to file a case including stamp duty by paying at the courts clerk counter. So there are two important actions which can affect the social world. Once lawyer submit the documents the clerk check for it and ask for the payment for the stamp duty in order to tender the case. The lawyer pays the stamp duty payment to the clerk. With the payment the clerk starts to tender the case to the case proceeding cycle. DEMO deals with B-organization means business transaction levels. Thus a different level of ontological model is created.

<table>
<thead>
<tr>
<th>Transaction #</th>
<th>Transaction type name</th>
<th>Result #</th>
<th>Result fact / production fact</th>
</tr>
</thead>
<tbody>
<tr>
<td>T01</td>
<td>Tender</td>
<td>R01</td>
<td>Tendering has been initiated</td>
</tr>
<tr>
<td>T02</td>
<td>Payment</td>
<td>R02</td>
<td>Payment has been paid</td>
</tr>
</tbody>
</table>

Table 2

<table>
<thead>
<tr>
<th>Transaction</th>
<th>Initiator</th>
<th>Executer</th>
</tr>
</thead>
<tbody>
<tr>
<td>T01</td>
<td>CA01</td>
<td>A01</td>
</tr>
<tr>
<td>T02</td>
<td>A01</td>
<td>CA01</td>
</tr>
</tbody>
</table>

Table 3

It is clearly visible two important transactions are taken place tendering (T01) and payment (T02) respectively. Ultimately each transaction produces its own results namely tendering has been initiated (R01) and payment has been paid (R02). The table 3 shows the initiator and executer to the relevant transaction. Figure 6 shows the process flow with the necessary links. T01 started by external actor role and it has three phases (order, execution and result) earlier discussed in this paper. Transaction one illustrates the order phase but execution phase is the conditional phase of the transaction two. The T02 should be completed in order to complete the execution of the T01. The dotted arrow from T02-R shows it.

Figure 7 illustrates the both transactions in order to finish the tendering process. CA01 is an external actor role of the court system (lawyer) initiates the process starting with requesting to tender the case to internal actor role A01 (clerk). Then the clerk promise the transaction and initiate the request for the payment to actor role CA01 (lawyer). Lawyer executes payment and states it to the A01. If payment is satisfied A01 accepts and starts the execution processes of tendering. Soon after the execution of T01, it is stated to the CA01. CA01 accepts the transaction T01 (tendered). Here more than the figure 6 we can see execution of T01 is pending till acceptance of T02 (payment) and the additional communicational acts such request, promise, state and accept.
Figure 7 shows actor transaction diagram and where actor roles involving in these transactions, initiator, executer, transaction kind, and whether the actor is internal entity to the system or an environmental actor. Always external composite actor role is colored as grey. It is visible that, the transaction accounts as diamond in the disk, which shows transaction includes coordination acts (disc) and production act (diamond).

In general the models are expressed in diagrams, tables and pseudo algorithms. In this paper, B-organization (system) is modelled since it deals with ontology production and only the Actor Transaction Diagram (ATD), the Transaction Result Table (TRT), and the Process Model (PM) are staged.

Conclusion:
Most court systems still follow the conventional design and procedures. Thus, the complexity and interoperable issues are alarming level. It is necessary to keep good communication between all D-level actors, I-level actors and B-level actors for the smooth functioning of the courts. The DEMO methodology gives the very positive solution for this problem all in one. Since its powerful different levels of communications act and production act produces either material or immaterial result for a certain transaction. So the DEMO can be successfully applicable to the legal domain since functional & constructional fulfillment; providing immaterial facts since courts system deals with it; interaction and communication between different organizational level actors; providing in and out understanding of selected enterprise; and the sustainability is high since the DEMO enables redesign and reengineering principles by keeping original concept remains and enables the structural change whenever possible and necessary.

Reference:
1 http://www.nyulawglobal.org/globalex/sri_lanka.htm#_4.4_District_Courts, accessed 30th June 2014

Inheritance Rights in the Context of Lesotho’s International Human Rights Obligations

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Abstract
The main issue this article observes is that the Kingdom of Lesotho is a party to some international human rights such as CEDAW and ICCPR. These instruments have some provisions that protect equality rights and CEDAW provides a detailed protection of equality rights. The concern is that section 18 (4) (b) & (c) of the Constitution of Lesotho permits discrimination in customary law matters such as adoption, marriage, divorce, burial and devolution of property. This is in conflict with the obligations that were voluntarily accepted by Lesotho in the above treaties. If it is serious about respecting its international obligations, section 18 (4) (b) & (c) ought to be amended and the above treaties incorporated to its national laws through legislation and other possible means.

Keywords: Equality, pactsasuntservanda, inheritance under Customary Law
Evaluation of Foramen magnum dimensions in gender determination using MDCT scan in South Indian population – A prospective study

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****, *****Intern, Department of Medical Imaging Technology, School of Allied Health Sciences, Manipal University, India

Abstract:
Objective: The present research aims to study the accuracy and reliability of foramen magnum (FM) measurements in gender determination by using Multiple Detector Computed Tomography (MDCT) images.

Methods: 89 patients (44 males and 45 females; age range, 21–78 years) were selected for this study. FM sagittal diameter, FM coronal diameter, FM volume and FM area were measured using MDCT images and data were subjected to SPSS for analysis.

Results: Area of the foramen magnum as calculated by the Radinsky and Texeira’s formulas were better predictors of sex when compared to the sagittal diameter, coronal diameter and volume of the foramen magnum.

Conclusion: MDCT images can provide valuable measurements of FM which can be used to ascertain the gender, when other methods are inconclusive.

Keywords: Foramen Magnum dimensions, MDCT images, gender determination

Introduction
Gender establishment in skeletal remains examination, especially from isolated bones is a challenging objective. In mass disaster, warfare and explosions, identification becomes difficult due to fragmentation. Accurate determination of gender can play pivotal role in such cases. Human skull is considered one of the most reliable bones for gender differentiation.1 It is considered as the second best region of the skeleton to determine gender, next only to pelvis. The length of the head, height of the head, circumference of occipital condyles and foramen magnum dimensions are few of the parameters used to determine gender of unknown human remains.2,3 Amongst them foramen magnum is an important landmark to differentiate gender. It is located in the basal region of occipital bone which is likely to survive in significantly disrupted remains due to its well protected anatomical location, thickness of the skull in that region and abundant soft tissue cover.4 In a study of anatomic metric values of foramen magnum it was concluded that the transverse and sagittal dimensions of foramen magnum were significantly higher in human males than human females.5 There are significant differences in shape and dimensions of foramen magnum in Indian population as reported by Zaidi and Dayal.6 Due to technological advancement measurement can be more accurate using radiography. Hence CT can be used to accurately measure the dimensions of bony parameters. Uysal et al established sexual dimorphism by using three dimensional (3D) CT to measure the dimensions of foramen magnum with 81% accuracy.7

In one of the researches done, Teixeria et al measured length and breadth of the foramen magnum in Brazilian skulls, took the average of the two as an approximate diameter of a circle and concluded as, if the surface area of foramen magnum is 963 mm$^2$ or more than 963 mm$^2$, it is male and if it is 805 mm$^2$ or less than 805 mm$^2$, it is female skull.8 In the present study MDCT images of foramen magnum were chosen to determine gender of a person from its dimensions in South Indian population.

Materials and Methods:
The study sample consisted of 89 consensual patients (44 males and 45 females; age range, 21 – 78 years) belonging to South India. They were referred to Radiology department of Kasturba hospital, Manipal (affiliated to Manipal University), a tertiary care hospital situated in South India for several reasons. Patients having history of trauma, surgery and pathological lesions in the region of foramen Magnum were excluded from the study. Sagittal diameter, coronal diameter and volume of foramen magnum were obtained using MDCT scan and data were analyzed.

The written Informed consent was obtained prior to the procedure. The standard operating procedure was followed while performing the MDCT. The patients were put into supine position and were not given any sedation or contrast medium. MDCT of head of 89 patients belonging to South Indian population was done in 16 slices Philips Brilliance Big Bore MDCT at Kasturba Hospital, Manipal. Routine brain CT protocol was followed for the scan in which the patients were first explained about the scan and were asked to remove radiopaque materials.
from the region of interest. Then they were made to lie down on the CT couch in supine position and head was supported on a head rest.

Head was immobilized with straps. Helical images of the brain were obtained from the level of first cervical spine to the vertex of the skull with a FOV (Field of View) of 250mm using slice thickness of 5mm and increment of 5mm with a standard resolution brain algorithm. Other technical parameters were kVp- 120, mAs- 401 and matrix- 512x512. The scan time was 1.7 sec.

The helical images were reformatted to coronal and sagittal planes with a slice thickness of 1 mm and increment of 0.5mm and images were then used for CT measurements of the foramen magnum. All the sections selected were parallel to the plane of foramen magnum to obtain the best image of foramen magnum (as seen in Figure 1 and Figure 2). Following measurements were taken:

Foramen magnum sagittal diameter (FMSD) was recorded as the greatest anteroposterior dimension of the foramen magnum and the foramen magnum coronal diameter (FMCD) was recorded as the greatest width of the foramen magnum as shown in Figure 1. Volume (Figure 2) and Area of foramen magnum was obtained automatically after tracing the bony margin around foramen magnum on the CT image using 3D program on CT work station.9

To increase reliability and reproducibility of the foramen magnum measurements and other measurements of the cranium, an inter observer and intra observer calibration was done. It was done by two radiologists who compared the greatest measurements of 10 randomly selected radiographs. Statistical comparison of intra and inter examiner measurements revealed no significant statistical significance (p>0.05) when paired t-test was applied.

Statistical analysis of the data was done using SPSS(Statistical package for Social Sciences) version 11.0 software(SPPS . Inc., Chicago, IL, USA). Area of foramen magnum was calculated using the formulas derived by Teixiera10 and Radinsky11. Differences between male and female measurements were tested using student’s t test. Statistical significance i.e. p value was defined as $\alpha = 0.05$. Sexual dimorphism index was determined to find the ability of each variable in gender determination of the skull as Mean male value/ Mean female value.

**Results and observation**

A total of 89 individuals were studied (44 males and 45 females with age range from 21-78 years). All the measurements were significantly greater in males than in females.

Table 1 shows the descriptive statistics for the sagittal diameter, coronal diameter, volume of foramen magnum as measured by MDCT scan and the area of the foramen magnum in both the genders. The sagittal diameter, coronal diameter, volume and the area of foramen magnum as measured by both the formulas (Radinsky and Texeira) are found to be larger in males when compared to females. Statistically significant gender differences were noted only for the area of foramen magnum.

Frequency distribution of the Sagittal diameter (Graph 1), coronal diameter (Graph 2), volume (Graph 3) of foramen magnum, and the area of foramen magnum as calculated using both the formulas (Graph 4) among male and female CT scans of skulls are shown. Overlapping of the male-female values is apparent for the different variables analyzed in the study.

Sexual Dimorphism Index was calculated to find the ability of each variable in sexing the skulls as; Mean Male value/ Mean Female value as suggested by Tanuj Kanchan et al.12

Area of the foramen magnum calculated using the formulas (Radinsky and Texeira) are better predictors of sex when compared to the length and breadth of the foramen magnum as shown in Graph 5.

**Discussion**

Identification of unknown human remains is an age old challenge. Establishment of big four parameters of identity i.e. Age, Sex, Race and Stature forms the crux of identification. To add on to it if there is fragmentation it becomes a horrendous task. Most of the sex related changes are appreciable after the development of secondary sexual characteristics. Gender determination would be possible from second decade onwards. Pelvis is one of the most important bones wherein sex related changes are significant. Skull is another bone wherein these changes are appreciable.

In skull foramen magnum dimensions have aided in gender determination for a sometime now. The craniofacial structures have the advantage of being composed largely of hard tissue, which is relatively indestructible.13 With the advent of technological aids like CT, idea of accuracy in measurements came into being. Murshed et al studied FM dimensions using spiral CT and recorded the mean value of FMSD (37.2 mm +/- 3.43 mm in males and 34.6 mm +/- 3.16 mm in females) and FMTD (31.6 mm +/- 2.99 mm in males and 29.3mm +/- 2.19 mm in females).14 Results pertaining to the FMSD were higher when compared to the present study, where FMSD was 34.33 +/- 3.10 in males and 33.04 +/- 2.65 in females. FMTD were lower to that of the present study where FMCD was 31.80 +/- 3.90 in males and 29.75 +/- 3.12 in females. Variation might be due to different measurement technique used in their study, as they had used a millimetric sliding caliper.

Amongst all the measurements of foramen magnum Volume of FM and Area of FM (as calculated by two formulas) were significantly higher in males than in females in our study.

Catalina – Herrera reported that the mean values of the area of foramen magnum found in male and female skulls were 888.4 mm2 and 801 mm2 respectively.5 These results were significantly higher than those of the present
study. Gunay et al measured the area of the foramen magnum directly on Turkish skulls. He considered it as a circle to calculate the area. To ascertain the radius of the circle he took the mean value of the sum of half the value of maximum length and maximum breadth. The results showed a mean value of 909.91 mm² ± 126.02 mm² for males and 819.01 ± 117.24 mm² for females. These values significantly higher than those reported in the present study. The variation might be attributed to methods of measurements. Gunay et al used anatomical methods whereas in the current study, radiographic methods were used for measurement to increase the accuracy.

**Conclusion**

There are significant biological differences in the metric and morphological measurements of skull between different races. Hence the utility of formulas derived from a study is population specific. Every geographic location has to derive their own formulas so that in need of expertise to identify unknown human remains they would have a reference. Current study showed that Area of foramen magnum as calculated by the two formulas can assist in gender determination. Hence MDCT images can provide valuable measurements of FM which can be used to ascertain the gender, when other methods are inconclusive.

**References:**

6) Zaidi SH, Dayal SS. magnum in Indian skulls.
Figure 1: MDCT image showing measurement of Sagittal and Coronal diameter

Figure 2: MDCT image showing measurement of Volume of Foramen Magnum

Table 1: Descriptive Statistics of measurements of foramen magnum \[n=45\text{(F)}, n=44\text{(M)}\]

<table>
<thead>
<tr>
<th></th>
<th>Range</th>
<th>Mean(S.D)</th>
<th>Z - value</th>
<th>P - value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sagittal diameter (mm)</td>
<td>Male 29.50 - 46.90</td>
<td>34.33(3.10)</td>
<td>-1.802</td>
<td>.072</td>
</tr>
<tr>
<td></td>
<td>Female 27.80 - 37.90</td>
<td>33.04(2.65)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coronal diameter (mm)</td>
<td>Male 23.20 - 42.40</td>
<td>31.80(3.90)</td>
<td>-2.709</td>
<td>.007</td>
</tr>
<tr>
<td></td>
<td>Female 23.50 - 36.90</td>
<td>29.75(3.12)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Volume (mm$^2$)</td>
<td>Male 528.80 - 1162.30</td>
<td>743.38(117.48)</td>
<td>-2.954</td>
<td>.003</td>
</tr>
<tr>
<td></td>
<td>Female 515.30 - 888.80</td>
<td>673.40(97.52)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Area (Radinsky’s formula)</td>
<td>Male 576.02 - 1562.44</td>
<td>862.83(167.22)</td>
<td>-2.667</td>
<td>.008</td>
</tr>
<tr>
<td></td>
<td>Female 559.82 - 1048.21</td>
<td>776.23(128.61)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Area (Teixeria’s formula)</td>
<td>Male 589.88 - 1566.42</td>
<td>866.37(166.48)</td>
<td>-2.680</td>
<td>.007</td>
</tr>
<tr>
<td></td>
<td>Female 562.23 - 1049.64</td>
<td>779.67(127.81)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Graph 2. Coronal diameter of foramen magnum

Graph 3. Volume of foramen magnum measured on CT scans
Graph 4. Area of foramen magnum calculated using Radinsky’s & Teixeria’s formula

Graph 5. Sexual Dimorphism Index
Enforcing the Environmental Protection through the Concept of Corporate Social Responsibility: Beyond the Traditional Boundaries of Corporate Law.

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Department of Legal Studies, Faculty of Humanities and Social Sciences, The Open University, Sri Lanka

Environmental protection is considered as one of the most urgent and important task in present time. Therefore, the global community has been taking enormous efforts to find out ways to protect environment. The intersection between corporations and the environment is complicated and bit strange. However, we cannot abandon the fact that many activities of the corporations, such as use of primary resources, use of energy, production of waste and emissions are severely effecting and threatening the environmental balance and wellbeing. The concept of Corporate Social Responsibility (CSR) is very broad and novel attempt which illuminate the need of protecting the environment through corporate governance. The 2001 European Commission Green Paper on CSR defines it as “a concept whereby companies voluntarily to contribute to a better society and a cleaner environment”. Therefore it is evident that the concept of CSR can be used as a tool to align corporate bodies on environmental conservation process. Though, until 2013 CSR could not able to play a direct role in Corporate Law in domestic level. However, in 2013 India incorporated CSR concept by introducing Section 135 and Schedule VII of the Companies Act,2013. According to this provision, every company with at least $830,000 in profit have to allocate 2 percent of the average net profit over three years against key social and environmental programs. So, the trend to incorporate CSR as a part of Corporate Law seems override the boundaries of traditional legal framework. It has opened a new door to enhance the environmental protection through an effective enforcement of Corporate Law.

Key Words - Corporate Law, Environmental Protection, CSR

Evaluation of response to Protease Inhibitor based ART Regimen as 1st Line in HIV Infected children

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** Additional professor, *** Professor and Head Department of Pediatrics, Government medical college, Surat, India

Aims and objectives:
1) To document clinical and immunological response to Protease Inhibitor based regimens as first line in HIV infected children less than 5 yrs.
2) To compare this response to all other first line regimen recommended by NACO and WHO

Materials and methods
This is an observational cohort study conducted in a tertiary care hospital, between December 2011 to June 2013. 43 Children of age less than five years with confirmed HIV status were included. At diagnosis and follow up clinical staging, CD4 levels and growth parameters were assessed of eligible children and allotted to Protease inhibitor (PI) and Non Protease Inhibitor (NPI) group.

Results:
Clinical outcome of both PI and Non PI group did not show a significant difference (p>0.05) but few children remained in stage 3 and 4 at the end of the study in PI group. The PI group showed better growth parameters. The immunological outcome showed higher mean CD4 count levels in the PI group after 6 months of ART.

Conclusion:
Both the regimens are equally effective at 6 months but PI based regimens achieved better growth parameters at 6 months of therapy.
"The Cathedrale rule as the WTO's remedy"

Dr. Song Ashley
University of Pennsylvania, LL.M. (2011-2012)

Abstract
In the World Trade Organization (WTO), the Dispute Settlement Body (DSB) is highly effectual mechanism, filing 488 cases from 1995 to 2015. With the positive transaction costs, the paper excludes the zero cost of Coase theorem and favors Calabresi’s cathedral of property rule, liability rule, and inalienability. The WTO contracts are incomplete and flexible. Thus, when the contracting Members breach or violate the contract, the remedial application of the property rule of bilateral negotiation and the liability rule of compensation becomes potent to fill out the contingency. The studies found the liability rule is dominated rather than the property rule to remedy the breach. Liability rule rebalances the monetary damages while the property rule focuses on enjoinment of the breach. The process of the DSB is oriented towards liability rule while gives rooms for property rule to settle disputes. Solid rules of property and liability would incentivize the Members not to breach the contract and respect the soft treaty of the WTO.

Keywords: the WTO, Dispute Settlement, Property Rule, Liability Rule, Compensation

I. The WTO and Theory

1. The WTO

The WTO consists of 160 states and is driven by the Members. Enforcement of the WTO obligation comes from three parties; self-enforcing of the first party, retaliation of the second party, and the third party intervention. The WTO, as institution, bears the enforcement character of informal remedies (reputation, peer pressure, fear of community cost, broad obligations in international law, etc.) and formal remedies of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) Article 22. Informal remedies can be derived from the members as the first party enforcement. Formal remedies of enforcement can be characterized as the third party intervention, such as the procedures of the DSU.

2. Coase Theorem

Without the consideration of the initial entitlements, property right goes to the most-valuer, the cheapest cost-bearer or risk-avoider in zero transaction cost. For example, if the person B values his right to enjoy silence 100, and his neighbor, the person A values his right to play the guitar 50, B gives more than 50 but less than 100 to A to be silent with negotiation. It assumes the perfect information and the same bargaining power between the two parties. There is no coercion or inequality for negotiation.

3. Calabresi’s Cathedral

Calabresi’s cathedral assumes inefficiency of the positive transaction costs, imperfect information, and unequal bargaining power. In breach of the WTO contract, property rule is that the two parties bilaterally negotiate the entitlements with inefficiency. Liability rule is that the dispute settlement body enters to allocate the entitlements. Inalienability is to reconstruct the entitlements ex-ante-the-breach and it is impossible in the WTO. In the WTO, liability rule prevails as the dispute settlement body files numerous cases in effect. However, many dispute settlement cases allows property rule in the process of the DSB, such as the Mutually Agreed Solution (MAS)\(^\text{90}\). Property rule and the liability rule can be distinguished whether they have the ex-ante consents. Property rule consents ex-ante the transfer; however, liability rule does not consent ex-ante the breach.

4. Incomplete Contract

The WTO is flexible that it has a default rule of the nonperformance of the contracts. The WTO contract is

\(^{90}\) DSU art. 4
incomplete with the contingency. If the unforeseen development occurs or the schedules need modification, the members can suspend the obligation in whole or in part or withdraw or modify the concession (the GATT Article 19 and 28). However, it should be processed with appropriateness and equivalence. Therefore, the WTO can apply property rule and liability rule which can remedy the incomplete contracts with the contingency. It cannot apply inalienability because it assumes complete contract without the contingency.

II. Property Rule, Liability Rule, and Inalienability

1. Property rule

A property rule is consensual transfer of entitlements. It protects the entitlement unless the owner consents to its taking. Property rule transfers the entitlements in private valuation of them. For the contractual parties, there is *ex-ante* incentive to deter damaging the entitlements. Inefficiency of property rule lies because of the difference in bargaining power between the strong member and the weak member. In the WTO, the difference of bargaining power between developed and developing countries would make difficult to justly utilize a property rule-type of the entitlement allocations.

2. Liability rule

A liability rule is non-consensual taking of them. The entitlements are objectively valued by the judging parties. Therefore, a liability rule is reliant on an appropriate institutional structure, such as the Dispute Settlement Body (DSB) in the WTO. Liability rule compensates the entitlements by the third party’s valuation of them. For the contractual parties, there is *ex-post* effect to rebalance the entitlements by compensation. Therefore, it is critical for the third party to calculate the accurate damage. Inefficiency of liability rule lies when one party gets the governmental subsidy.

3. Inalienability

Inalienability does neither allow consensual exchange nor non-consensual taking. It intrinsically bans any violation of agreements or exchange of entitlements; thus, the contract should be mandatorily and unconditionally performed. Inalienability does not include contingency. There is no default rule, no violation of contract, no allocation or destroy of the entitlements. There is no need to settle disputes. The WTO does not apply inalienability. The Kyoto protocol applies inalienability in its environmental cap of the CO2 emission; the signatories cannot escape.

4. Remedies

The third step is remedy; back-up enforcement to protect the entitlements. A property rule remedies by sanctioning, injunction, or specific performance. A liability rule remedies by compensating towards the unilateral action (damage-compensation). Inalienability requires mandatory-specific-performance. The first step requires the *ex-ante* commitment of concession; the second step entails efficient default rules and gives the right of non-performance incentives to injurers while compensating the victims until the level of pre-commitment; the third step should forestall extra-contractual opportunism by enforcement91.

<table>
<thead>
<tr>
<th>Step 1</th>
<th>Step 2</th>
<th>Step 3: Protect the entitlements</th>
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<tbody>
<tr>
<td>Allocate the entitlements (Who has the right in disputes)</td>
<td>Property Rule</td>
<td>Injunction (deterrence)</td>
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<tr>
<td></td>
<td>Liability Rule</td>
<td>Compensation (payment of the damage incurred)</td>
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<tr>
<td></td>
<td>Inalienability</td>
<td>Unconditional specific performance (under the complete contingent contract)</td>
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III. Property and Liability Rules in the WTO

1. The WTO’s Property Rule

A property rule in the WTO is hard to be observed. The WTO does not have formal sanction in case of violation of agreements. Nor does the WTO’s institutional structure grant any central enforcement, formal penalties, punitive damages, and specific performances. However, the parties can get into the parties can bilaterally get into consultation, conciliation (the DSU Article 4, 5) before they establish their panel (the DSU Article 6). They can privately bargain through ex-post renegotiation (the DSU Article 28). It should endeavour to maintain a general level of reciprocal and mutually advantageous concessions. Reciprocity and tit-for-tat tariff concessions are necessary. The remedy of property rule is to enjoin the violation.

2. The WTO’s Liability Rule

A liability rule prevails in practice. Once enter into the DSB, the implementation of the Appellate Body Reports is effective, occupying about 40% of the Dispute Settlement Cases from 1995 to 2009. Compensation is substantially ‘equivalent.’ Any party may request the authorization of compensation and the suspension of concession, any party may request the authorization from the DSB to suspend the application. In the dispute settlements, as long as the DSB ruling has been made, the case has been intervened by the court in order to allocate their entitlements. Because the institutional feature of the WTO does not normally allow the monetary compensation, the injurer can pay ‘trade-flow-based’ compensation to the victim. That is, not based on the Most Favorable Nations (MFN), the losing party grants greater liberalization to the opponent in trade terms, e.g., autonomous tariff reduction. The injurer compensates the victim by means of tariff concession, including tariff reduction or elimination. Also, the victim increases the quantity of autonomous tariff quota. The typical means by which a government achieves compensation is through the ‘counter-retaliation,’ i.e., by raising its own tariffs.

3. The DSB

The DSB is costly and time-consuming, normally ten years or more. The DSB is liability rule as it intervenes the parties. However, in the process of the DSB, property rule can settle down the disputes. The DSB consists of the Panel and Appellate Body (AB). The Panel has three members who are appointed by the disputed parties; they cannot be in the same countries as the parties; if the parties in equivalence standard have failed to establish the Panel, the Secretary General appoints them with appropriateness. The Appellate Body (AB) consists of seven members and they have four years of interim and can be reelected once. The composition of the AB considers the continental fairness. In the dispute settlement of the WTO, implementation of the Appellate Body and Panel reports are the most effective stage, among 488 DSU cases by the year of 2015.

4. Compensation

The standard of compensation for the damage or violation of the WTO contract is equivalence and appropriateness. The level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment. The arbitrator shall determine whether the level of such suspension equivalent to the level of nullification or impairment. The contracting parties shall make appropriate recommendations to the contracting parties which they consider to be concerned, or give a ruling on the matter.

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92 DSU art. 28
94 DSU art. 22.2
97 DSU art. 8.7.
98 DSU art. 22.4.
99 DSU art. 22.7.
5. Which rule is more efficient; a PR or LR?

Efficiency of a property or a liability rule depends on the AC and TC. I would assume that the intervener bears low AC. In the ex-post circumstance where TC is low, a property rule of bilateral negotiation for entitlement-buy-outs can be dominant rather than a liability rule of interventions because low TC eases bargaining of the contracting parties. If the situation of ex-post contract bears high TC, which makes the members difficult to bargain, it would be efficient to apply a liability rule; compensating for the damage occurred, paying cheap to the intervener.

<table>
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<tr>
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<th>High AC*</th>
<th>Low AC</th>
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<tbody>
<tr>
<td>High TC**</td>
<td>(1) -</td>
<td>(2) LR</td>
</tr>
<tr>
<td>Low TC</td>
<td>(3) PR</td>
<td>(4) LR, PR</td>
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Assessment Cost*: Information costs; costs of the damage assessment for the intervener (courts)
Transaction Cost**: Transaction costs in private bargaining

(1) Neither private bargaining nor the accurate damage-calculation by the third party is feasible. Parties can neither privately negotiate for the exchange of entitlements nor process their dispute efficiently to the courts.
(2) Negotiation may not be successful because of the high TC; whereas the damage compensation is more likely in the low cost of information acquirement by the courts. A liability rule dominates.
(3) Low cost for bargaining makes efficient for the parties to negotiate.
(4) The damages can be reasonably computed by the courts; a liability rule would be efficient. Private bargaining is also efficient because of the low TC.

IV. Cases

1. US-Subsidies on Upland Cotton (DS 267)

The case went through the liability rule of Panel and AB Report, however, it resulted in the property rule because parties reached mutually acceptable solution on implementation of the Panel and AB reports. The problem was the US subsidy on cotton was contingent and functioned as suppression on the world market price, forming the anti-competitive world market share. The contingent subsidies are prohibited101. The DSB authorized the Brazil’s countermeasures of suspension of concessions and other obligation under the TRIPS and GATS. The US responded that the level of Brazil’s suspension is not equivalent to the level of nullification or impairment, arguing the equivalent level 147.3 million USD annually. Although they can follow liability rule of implementation of reports, Brazil and the US decided to terminate the case in property rule after liability ruling.

2. US-Offset Act (DS 217)

The case applied liability rule of retaliation. The Panel authorized the multiple retaliations of the multiple complainants as they disagreed with the implementation of the Panel and AB reports of the respondent. At a DSB meeting held within 30 days after the date of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB102. The US-Offset Act case was ruled to compensate in terms of its trade-effect. The EC, suspended the contracts equivalent to the level of nullification or impairment in terms of trade effect in the standard of equivalence. Multiple countries followed the same procedures to be against the US, which is open for free-riding and copying among the smaller countries which do not have a concrete mechanism on finding out or measuring their damage.

100 GATT art. 23.2.
101 Agreement on Subsidies and Countervailing Measures [hereinafter SCM] art. 3
102 DSU art. 21-(3)
3. US-Foreign Sales Corporation (DS 108)

The liability rule has failed, and the parties result in mutually settled implementation of the reports under the property rule. The tax exemption on the foreign sales corporation was the prohibited subsidy103. The compensational amount of damage was the amount of subsidy; in terms of trade subsidy approach. The panel recommended that the respondent withdrew the subsidy without delay, which has failed to implement.

V. Conclusion

The legal remedies for breach do not directly determine the policy outcome, but they do impact it indirectly by shaping what governments can expect if their attempts at settlement fail104. The property rule and liability rule can be a safety valve for the parties and encourage their pre-commitment in agreements and their efficient behaviors after the DSB ruling.

[Graphs 1-4]

1. Dispute Settlement Cases (1995-2014)

2. The DS 402 cases (1995-2009)

103 SCM art. 4.7
3. The DS 86 cases (2010-2015)

Architectural Framework for successful Electronic Legal Service Deployment

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Abstract:
Ever increasing diversity of roles offering different legal services and constantly created new legal cases has resulted complex and highly dynamic environment for electronic legal solution development. In this context, early identification of multi-party collaborative environment offering many different legal services is the fundamental for a successful electronic legal service deployment. However, unavailability of a framework that could facilitate systematic guidelines in requirement elicitation to identify the complex multi-party collaborative processes as well as the nature of information handled by the collaborative parties may hinder the achievement of successful electronic legal service deployments. The Service Aware Interoperability Framework is such global healthcare standard focused mainly on providing a methodological support to model services using notions of value activity types in networked environment as well as it provides a foundation for higher level service identification and planning when designing healthcare solutions. This research work is a partial contribution of an attempt to get established a framework in aligning with Service Aware Interoperability Framework that could facilitate successful electronic legal service deployment while overcoming aforementioned deficiencies. The proposed framework could be served as the theoretical basis for electronic legal service solution industry.

Keywords: Legal Collaboration; Electronic legal service; Service Aware Interoperability Framework

1. Introduction
Legal domain is a special networked environment as it comprised of a huge spectrum of service providers and service recipients whose work involve a high level of documentation and information processing, and storage with a growing demand for information retrievals from huge volumes of legal data. However, intangible service co-creation and offering within the domain occur through complex service coordination among each domain participant. Therefore, when considering these complex situations, it is necessary to get established a systematic approach that could facilitate the coordination of various flows of legal information exchanges and related activities of legal services offered in shared environments. A popular attempt to solve these situations is the introduction of Information and Communication Technology (ICT) [11]. Even though ICT has become an integral aspect for any industry, adoption of advancements of ICT in legal domain is much slower compared to several other domains. This is mainly due to the fact that the modern technological progress outpaces the nation’s legal framework to response in timely manner. However, majority of complexities and performance issues could readily be overcome with promising benefits by introducing ICT in this domain as well. Often time, when attempting to develop more advanced ICT solutions for manipulation and communication of legal information, inherited complexities of legal procedures followed, ever increasing diversity and differentiation of legal cases and rigidity of followed rules and regulations have resulted challenging, complex and highly dynamic environment for electronic legal solution developers. Another issue in shared environment with mandatory and unavoidable very many multiparty service collaborations is there could be different legacy applications developed on heterogeneous platforms to facilitate different activities of legal roles which could result interoperability issues among such applications. Therefore, it is needed to find a unified framework that could facilitate analysis, designing, development and deployment of legal services while capturing dynamic and emerging domain requirements in order to achieve successful electronic legal solutions.

Nowadays, most enterprise solution developments are based on service orientation and related modeling concepts in order to cope with demanding flexibility, portability and agility for successful and sustainable service deployments. One of the popular attempts that facilitate capturing business knowledge requirements of generic trading procedures that found in literature is UN/CEFACT’s (United Nation’s Center for Trade Facilitation and Electronic Business) recommendations [12]. Another notable global standardization effort that found in the healthcare industry for aforementioned and similar situations is Service Aware Interoperability Framework (SAIF) [7] which focused mainly on achieving working interoperability based on service oriented architecture. However, during our literature survey, it was evident that, there are no such standard frameworks to adapt in legal domain as the systematic guidelines that could facilitate legal service solution designing and deployment, not only to identify the complex multi-party collaboration processes within and between the legal service providers, but also to identify the nature of information handled by the collaborative parties. The work reported here could be considered an attempt to meet above issues and deficiencies. Our previous research work [2], [3] covered legal service collaboration modeling including main semantics of modeling elements for defining the choreography for sector
collaboration. Further improving our contributions towards more comprehensive legal service identification has been tried in this research work. In this paper, we report on an attempt to develop a classification schema related to the behavioral and information objects relevant to legal domain based on UN/CEFACT’s recommendations and SAIF, with the objective of understanding the legal service collaboration processes as well as of identifying the nature of information requirement of collaborating parties, in such a way as to provide a solid foundation for the creation of successful electronic legal systems while facilitating inter-communication between electronic legal applications, in particular for divorce case management domain. The rest of the paper is structured as follows. Section 2 describes research background with relevant standards and related work Section 3, outlines the proposed classification schema. Finally, Section 4 concludes the work by stating brief evaluation and benefits of the proposed approach.

2. Related Work and Research Background
In this section, we have briefed the related work and the foundation of the proposed framework for identification and categorization of different value objects in legal service collaborations.

2.1 Related Work
There are several areas in legal domain that have been researched in order to enable the use of information technology (IT). One significant example is in the area of legal arguments [1]. This area comprises legal arguments of a defensible context as they are conducted in a courtroom and involves the representation and abstract analysis of the arguments brought forward by both parties in such a case. Another significant area of legal and IT research is in legal contracts. In this regards, the research work reported in [5] focuses mainly on contract assembly, contract representation and analysis, and other related efforts in the automated handling of legal contracts. More recently, research has looked at the representation and analysis of law using modeling languages. For example, the research reported in [4] used the process modeling language Aris in their work for the e-Justice project. However, all of these contributions are at very lower technical level and not directly related and addressed the identification of complex multi-party legal collaborative processes as well as the nature of legal information handled by collaborative parties, as of interest in our work.

2.2 Service Aware Interoperability Framework (SAIF)
In analogous to plaintiff centered service enactments, the healthcare industry is a networked business environment that centered around on patient to whom bundle of services are offered by a huge spectrum of healthcare services providers. However, it could be noticed that a number of ICT solution deployments to achieve health information exchanges in healthcare domain failed mainly because of lacking systematic guidance in electronic solution designing based on different actor perspectives in order to meet their diverse information requirements. SAIF is one of the global healthcare standardization efforts mainly on achieving healthcare service modeling based on working interoperable behavior [8]. It primarily combines recommendations from two global standardization organizations; OMG [10] (Object Management Group - nonprofit organization that introduces ICT related standards) and HL7 [7] (Health Level 7 - internationally recognized organization that introduces messaging standards for healthcare domain). Specifically, SAIF assists in identification and categorization of different information and service requirements for value objects that are being exchanged among distributed systems. SAIF consists of four sub-frameworks, composed of grammars, for defining and managing such specifications. Behavioral Framework (BF) grammar defines constructs to specify the dynamic semantics of interactions in an interoperability specification. Information Framework (IF) defines the grammar for information and terminology models, metadata, value sets and schemas that specify the static semantics of interactions. Governance Framework (GF) grammar enables an organization implementing SAIF to manage risk by relating decisions and policies, to the IF and BF interoperability specifications. Enterprise Conformance and Compliance Framework (ECCF) enable an organization implementing SAIF to organize and manage interoperability specifications. However, these contributions are not directly related and addressed the identification and categorization of value objects that are being exchanged among different participants in legal service collaborations. Accordingly, as our work mainly focused on developing a methodological framework for understanding the legal service collaboration processes as well as for identifying the nature of the information requirement of collaborative parties, we propose our meta-model design considering SAIF sub-frameworks; BF and IF.

2.3 UN/CEFACT Modeling Methodology (UMM)
For electronic business collaboration modeling, there are very many different approaches. However, among those established contributions, UMM [12] is well known and adopted in many different industries and many different electronic business solution providers. Mainly, UMM recommends utilization of set of meta-models to facilitate specification of reusable, reproducible system specifications that are technology and protocol insensitive, and advises well defined service workflows for business collaboration designs. UMM meta-models consist four views in order to describe the different business concerns during collaboration designing. Business Operations Map (BOM) is partitioning of business processes into business areas and business categories. Business Requirements View (BRV) is the view of a business process model that captures the use case scenarios, inputs, outputs, constraints
and system boundaries for business transactions and their interrelationships. Business Transaction View (BTV) is the view of a business process model that captures the semantics of business information entities and their flow of exchange between roles as they perform business activities. Business Service View (BSV) is the view of a business process model that specifies the network component services and agents and their information exchange as interactions necessary to execute and validate a business process. Accordingly, our work mainly focused on to the BTV, as it is the basis for defining the orchestration of business collaboration, through which business information are exchanged among trading parties.

3. Architectural Framework for Electronic Legal Systems
To define the choreography of legal sector collaborations between multiple collaborative parties, an architectural framework for making electronic legal systems is proposed in this section based on the domain investigation that we completed in connection to judiciary procedures particularly at divorce case hearing proceedings.

3.1 Legal Behavioral Framework (LBF)
In analogues to BF Error! Reference source not found. in SAIF recommendations, the proposed LBF defines constructs to specify the dynamic semantics of information exchanges among various stakeholders, system components and applications. Figure 1 illustrates the proposed modeling constructs that could be used to express the structure and the behavior of objects for building the collaboration models in legal services. In this approach, collaborations could be modeled as choreographed collection of transactions which are used to exchange legal documents, mainly to address the complexity issues in multi-party collaborations (please see Section 4.2.6 of [3]).

![LBF Diagram](image)

Consorts

3.2 Legal Information Framework (LIF)
The LIF defines the grammar for information and terminology models, metadata, value sets and schemas that specify the static semantics of interactions, as the same manner as IF [1] in SAIF recommendations. Figure 2 illustrates the proposed classification schema that could be used as the basis to express the structure of case related information objects which are to be shared among the stakeholders with the objective of identifying the requirements of dynamic and ever changing legal environment, focused mainly on achieving working interoperability. During our investigation in legal domain, we have noticed that the domain participants always should exchange the legal information in a structured manner while performing many different activities of legal services offered in shared environments. In this regard, the proposed LegalCaseDocument modeling construct could be considered as an extension to the original UMM StructuredDocument model element. Accordingly, LIF includes the modeling constructs for structured documents only. As depicted in Error! Reference source not found., we have further specialized the proposal into three sub-types according to the main phases in a lawsuit that the legal documents have been prepared.
Pre-TrialDocument: The requirement for adaptation of Pre-TrialDocument model element is to represent any structured document which is used as the first step to getting to trial in a lawsuit. However, at the pre-trial proceedings, each party in a lawsuit prepares and exchanges many different initial documents that make it necessary for having different static semantic representations for each. These proposed model elements are Proxy, Pre-TrialMotion, Plaint, Summon, Answer, ListTOBeCalled and each could be considered as a part of the Pre-TrialDocument construct.

- Proxy: Lawsuits in court go through a number of steps. One intial step would be a hire a lawyer. During the pre-trial proceedings, each party to a lawsuit need to appoint a lawyer to handle the case. Accourdingly, there is a structured document called proxy which provides the written authorization allowing one person to act on behalf of another. In order to meet this need, a model element named as Proxy have been proposed to represent any structured document that give and grant to an attorney in fact full power and authority to perform every necessary acts with respect to a lawsuit.

- Motion: A motion is an written request made to the court for an order on a particular point that comes up during the course of a lawsuit. However, as a motion could be made before, during, or after a trial, we get explored the need for differentiation of the representation of such written requests into three; Pre-TrialMotion, TrialMotion, Post-TrialMotion. The general requirement for adaptation of these specialized constructs are to represent the written documents that ask the court to make orders with respect to legal proceedings in a lawsuit.

- Plaint: This model element could be used to represent any structured case-initiating document in writing of grounds of complaint made to a court and asking for redress of the grievance. Furthermore, any other structured documents as evidence in support of the complaint, shall annexed to the plaint. These documents has been denoted in PlaintAnnex model element.

LIF Constructs
- Summon: The requirement for adaptation of Summon model element is to represent any structured document which cites a defendant to appear in court to answer a suit which has been begun against him or the requirement for attendance of a person to give evidence or to produce a document during the trial. Meanwhile, a specialitation of Summon model element named as ForeignSummon have been proposed to represent any structured summon document prepared to serve where the respective person resides in another country.

- Answer: The answer in a lawsuit is a statement admitting or denying the several avermen ts of the plaint, and setting out in detail plainly and concisely the matters of fact and law, and the circumstances of the case upon which the defendant means to rely for his defence. Such structured document in a lawsuit could be modeled by using the proposed modeling construct named as Answer. Also, any other structured documents as evidence in support of the defence, shall annexed to the answer, which could be represented by AnswerAnnex model element proposal.
• **ListTOBeCalled:** Before the date fixed for the trial of an action, each party to a lawsuit files a list of witnesses to be called at the trial, and a list of the documents relied upon and to be produced at the trial in the court. Accordingly, we get explored the need for differentiation of the representation of such structured documents into two, named as **WitnessList** and **DocumentList**.

**TrialDocument:** At trial, the parties to a lawsuit present evidences in support of their claims or defenses to a judge. Therefore, the requirement for adaptation of **TrialDocument** model element is to represent any structured document which is submitted and exchanged among the parties, and drew the judge's attention to the relevant evidence and law. However, as same as the pre-trial proceedings, in here, each party in a lawsuit prepares many different structured documents that make it necessary for having different static semantic representations for each. These proposed model elements are **TrialMotion**, **EvidenceDocument** and **TemporaryOrder**.

• **EvidenceDocument:** The trial in a lawsuit consists of each party's advocate setting out their case and calling on the evidence of the witnesses and documents that they seek to rely on. Such structured evidence documents place before the court in support of their claims could be represented by the proposed **EvidenceDocument** modeling element.

• **TemporaryOrder:** The requirement for adaptation of this specialized element is to represent the temporary orders that outline specific actions that must take place immediately and last until the final divorce hearing.

**Post-TrialDocument:** The requirement for adaptation of **Post-TrialDocument** model element is to represent any structured document in a lawsuit, which is used upon the evidence has been duly taken and after the parties have been heard. Similar to the above proposals, even here, each party in a lawsuit prepares and exchanges many different structured documents that make it necessary for having different static semantic representations. These proposed model elements are **Post-TrialMotion**, **DecreeNisi** and **Appeal**, and each could be considered as a part of the **Post-TrialDocument** construct.

• **DecreeNisi:** The judgement of a lawsuit have been given after the trial. However, at that moment, a decree nisi is issued by the court to tell the parties that they have to wait a certain period of time before making the judgment final. Accordingly, a decree shall be a decree nisi and shall become absolute at the expiration of a specific time period. In analogous to this, **DecreeNisi** and **DecreeAbsolute** model elements have been proposed to represent such structured documents respectively.

• **Appeal:** Following the trial, either party of a lawsuit who dissatisfied with the judgment could appeal, asking a higher court to review the trial court proceedings. Such structured document in a lawsuit could be modeled by using the proposed modeling construct named as **Appeal**. Furthermore, any other structured documents as evidence in support of their arguments, shall annexed to the appeal document. These documents has been denoted in **AppealAnnex** model element.

4. Conclusion

Importance of the introduction of ICT in order to achieve the coordination of various flows of information exchange and related activities of services offered in shared environments, has been highlighted extensively in literature. Accordingly, to achieve successful electronic legal solutions, the need to find a unified framework that could facilitate analysis, designing, development and deployment of legal services while capturing dynamic and emerging domain requirements ensuring semantic interoperability between legal service applications has been identified. The work reported here introduced a partial contribution in an endeavor to develop a complete and sound legal service designing framework. For the development of this framework, we have based our proposals on BF and IF that has been proposed in SAIF recommendations and meta-model of BTV on globally accepted standard, UN/CEFACT’s recommendations. With utilization of the proposed architectural framework in designing and development of electronic legal service solutions, much of burdens connected with early identification of complex multi-party legal collaboration processes could readily be overcome, since it clearly defines the choreography for sector collaboration as well as the structure of legal information exchanges. Finally, we would like to brief some of the possible future directions of the work we have reported here. Among them, with utmost priority could be given to demonstrate a draft modeling of an application area based on the proposal in order to illustrate the potential applicability.

References

Access to Information a Remedy to Curtail Corruption

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Abstract
Information is power, and that the executive at all levels attempts to withhold information to increase its scope for control, patronage, and the arbitrary, corrupt and unaccountable exercise of power. Therefore, demystification of rules and procedures, complete transparency and pro-active dissemination of this relevant information amongst the public is potentially a very strong safeguard against corruption. Transparency and accountability is the key to good governance and one way to bring this about is by allowing people access to government held information. It is in this context that the right to information is so important. A statutory right to information would be in many ways the most significant reform in public administration. This is because it would secure for every citizen the enforceable right to question, examine, audit, review and assess government acts and decisions, to ensure that these are consistent with the principles of public interest, probity and justice. It would promote openness, transparency and accountability in administration, by making government more open to continuing public scrutiny.

In this paper the author reexamines on how corruption is linked to development right and how right to Information is able to bring or tackle the corruption prevailing in the country. The study will also include case to case analysis. A view will also focus on the international perspective of how access to information is effective tool to expose corruption at different levels. But the question remains why still corruption continues to affect the countries worldwide. Is it lack of legislations or other issues? The study outcome will suggest the necessary remedies feasible to clear the mist of corruption to make the government more efficient and accurate.

Key words: Corruption, Information, Development
Rethinking the Concept of International Legal Personality

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The research seeks to analyse the concept of international legal personality with a view to exploring the possibility of expanding the concept of international legal personality to include individuals.

The research seeks to argue that; while the classical definition of the concept of international legal personality has extended over the years, there would arise a need to further expand the concept as the roles expand, in order to ensure that there would be legal recognition and that the actions of these various actors would be under the scrutiny of International Law. Individual has been given standing in international arena through the concept of International Human Rights Law and individual complaints procedure recognized in the International Convention on Civil and Political Rights, Convention on Elimination of all forms of Discriminations Against Woman and the International Convention on Economic, Social and Cultural Rights. This research suggests that International Law would act as a screening body of law needs to evolve the concept of international legal personality to accept the changes of roles in terms of increased participation and increased involvement of the individuals in the international arena, especially in the Sri Lankan context.

The research methodology would be concentrated on the secondary qualitative data, which includes writings of different jurists on the relevant area and analysis of the current issues that have arisen especially with reference to Sri Lanka and the issues that could arise in the future and the possibility of addressing those issues through this very basic concept ingrained in international law.

Application of the Concept of Trusteeship for the Sustainable Management of Natural Resources: Reception of Ancient Wisdom in the Sphere of Environmental Law

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The uninterrupted relationship between man and the environment has taken its roots as far back as when the life of the earth began. Although the man has not an existence without the environment, the modern society which is contesting to achieve development has been forgotten the eternal relationship between man and the environment. Therefore, when balancing the everlasting conflict between development factors and environmental concerns, the modern environmental law is to search for new conceptual dimensions with far-reaching effects. Though, the ancient sustainable traditions and concepts have been neglected by the modern society, if we are stepping up towards our ancestral wisdom closely, it can be foundsome positive insights which can use extensively in this regard. This Herculean task was successfully done by Judge Weeramantry in the case concerning the Gabcikovo-Nagymaros Project (Hungary v. Slovakia, 1997). Through examine the ancient irrigation-based civilization and Buddhist philosophy in Sri Lanka, Judge Weeramantry has extracted and introduced the Concept of Trusteeship as a concept with higher normative value. The root of this concept is that the natural resources are not ownedby anyone and humankindis only the guardians of natural resources. Therefore, the guardians’ duty is to protect natural resources for the benefit of all living beings. Moreover, this illuminated idea has been accepted domestically and internationally in juristic writings as well as judicial pronouncements by concerning its widespread value on sustainable management of natural resources. The basic argument is that the ancient wisdom can be used beyond its boundaries to develop and enhance the environmental law concepts.

Key words: ancient wisdom, concept of trusteeship, sustainable management of natural resources
Interdisciplinary Education in Child Care and Protection: An Illustration of the Advantages of Coursework Masters Programs

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We show in this paper that interdisciplinary coursework Master’s degrees can be fashioned to provide excellent learning environments for legal professionals seeking expertise in child care and protection litigation or adjudication. They can empower lawyers by developing their capabilities for understanding the multifaceted needs of children and their families. In particular, we illustrate the benefits for Law Master’s candidates in joining with postgraduate students from other discipline backgrounds to jointly brainstorm child-related topics at roundtable seminar classes. We show that at such seminars Law candidates can learn to more effectively interpret and apply children’s rights by participating in practical problem-solving exercises, together with other students. With the addition of seminar participants from disciplines such as social work, medicine, psychology and education, many benefits accrue. We develop the proposition that Law participants can gain a much wider, ‘multifaceted,’ responsiveness to the needs of children. We then offer some detailed suggestions for designing a suitable coursework Master’s program. For purposes of illustration, we draw on our experiences in teaching in the Interdisciplinary Master’s Degree in Child Care and Protection at the University of KwaZulu-Natal since 2000.

Key Words: Child Care and Protection

A Fairy Tale or Not; Can Bio-piracy Prevented by Patenting Genes?

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Sri Lanka, the pearl in the Indian Ocean, rich with uncountable variety of bio-diversity and this myriad richness is a universal fact among all countries in the world. The significant feature of the biodiversity of Sri Lanka is high portion of endemic species among fauna and flora. But this significant feature is also a curse to the country because, many developed countries and multinational pharmaceutical corporations had identified some flora situated indoors the country have possessed invaluable medicinal curatives and agricultural values which could be used and reproduced expensive medicine and agricultural products to the global market. However, the problem is, this catastrophe took place by the developed countries without prior informed consent from the indigenous and local communities (ILC) of the country and moreover the benefits occurred from manufactured medicinal and agricultural products have only been consumed by these developed countries without compensate or paying loyalty to these ILCs. Additionally, these developed countries registered patents under intellectual property law regime and enjoy its emerged benefits exclusively for a long period. This situation could be controlled within the country by developing a mechanism which could permit to patent natural genes indoors. According to the law there are some requirements examined for being a patentable subject matter and these requirements are novelty, usefulness and inventive step. So the question is does a natural gene is fulfilled these features required by law?

Keywords- Bio-diversity, Bio-piracy, patenting genes
“Breaking the Silence”; General Recommendation 30 on women in conflict prevention, conflict and post-conflict situations by the U.N. Committee on the Elimination of all forms of Discrimination Against Women (CEDAW)

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ABSTRACT

The Committee on the Elimination of all forms of Discrimination against Women (Herein after Women’s Committee) adopted its 30th General Recommendation in October 2013 on women in conflict prevention, conflict and post-conflict situations by CEDAW (herein after General Recommendation 30) breaking its decades-long silence on the situation of women in armed conflicts. General recommendations of the U.N. treaty-based human rights mechanisms are the “authoritative guidelines” issued by the respective committees to interpret the treaty-provisions for the state parties to the Convention.

The main objective of the research is to recognize the domain of the general recommendation 30 as an effective mechanism to remedy the situation of women in armed conflict. Secondly, the researcher analyses the jurisprudential aspects in general recommendation 30; mainly the principles embedded in CEDAW such as “equality and non-discrimination” between men and women. Finally, the research will be concluded on the general recommendation 30 of CEDAW identifying it as a stepping stone, “breaking a long-term silence” on progressive interpretation of the phenomenon of situation of women in armed conflicts in light of the human rights law and international humanitarian law.

Key Words: General Recommendation 30, Women’s Rights, Conflict Situations

I. Introduction

The main objective of the research is to focus on the General Recommendation 30: Women in Conflict Prevention, Conflict and Post-Conflict Situations (herein after GR 30) of Convention on the Elimination of all forms of Discrimination against Women (herein after CEDAW) adopted by the U.N Committee on the Elimination of all forms of Discrimination against Women on the 18th October, 2013 (herein after Women’s Committee) as an effective mechanism to remedy the situations of women in armed conflicts.

The Convention on the Elimination of all forms of Discrimination against Women could be recognized as the key development during the U.N. Decade of Women (1976-1985). The Convention is a comprehensive statement of the right to nondiscrimination on the basis of gender. CEDAW binds state parties as well as non-state parties for possible violations against women’s human rights.

The Committee on the Elimination of all forms of Discrimination against Women was established under the Article 17 of CEDAW. Article 17 of CEDAW expressly directs on the composition and the functions of the

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105 M.Phil./Ph.D Candidate, LLM in Human Rights Law (Minnesota-USA) LLM (Col.-Sri Lanka), LLB (Hon), Attorney-at-Law
110 Art. 2(e): To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise...
Committee in relation to its role as the Guardian of the CEDAW\textsuperscript{111} The Committee commenced its work in 1982 and its main objective is to supervise the effective implementation of CEDAW through review of periodical reports submitted by the States Parties. Further, it issues general recommendations for the interpretation of the provisions of CEDAW for State Parties. General Recommendations are authoritative statements issued by the CEDAW Committee on defining the substantive meaning of the articles of the CEDAW Convention.

Before adopting the Optional Protocol (Herein after OP-CEDAW) to CEDAW\textsuperscript{112} in 2000, it did not have quasi-judicial powers. After adopting OP-CEDAW, currently, the Committee can receive communications from individuals and INGOs.\textsuperscript{113} Within the aforesaid framework as well as in light of the CEDAW’s main terminology of “equality and non-discrimination,” it is to be discussed about the GR 30 as a tool to effectively address on the issues of women in armed conflict. Especially, the research focuses on adopting the “theory of complimentarity” of the CEDAW and other international laws, such as international humanitarian law, refugee law and international criminal law in GR 30. Among the many areas discussed by the Women’s Committee in GR 30, the research is limited to the legal framework in light of the theory of complimentarity. Women in post-conflict situations will not be a part of the subject matter of the research paper.

II. Discussion

“Women in armed conflict” has not been properly recognized by the Women’s Committee until it has issued GR 30.\textsuperscript{114} Given the situation in the world, women in armed conflict is a concept that cannot be ignored without framing in a strong legal framework, in order to protect women in different and complex conflict situations. However, international humanitarian law recognized women as “protected civilians” as early as in 1949.\textsuperscript{115}

\textsuperscript{111} Art.17. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.


\textsuperscript{113} Art.2: Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.


Women’s Human Rights Law is mainly based on CEDAW and there was a considerable gap between conflict situations and protecting of women’s rights. Nevertheless, the CEDAW has long been silent on the women in armed conflict in its respective domains; for example the Rwandese internal armed conflict and Bosnian international armed conflict which women rights were severely violated in forms of rape and various other types of sexual violence and in post-war situations. In its concluding observations on Rwanda, the Women’s Committee commented that “The Committee was dismayed at the deep psychological trauma, the unwanted pregnancies and the massive rape of women and girls during the genocide, which resulted in widespread HIV/AIDS and other sexually transmitted diseases.”

GR 30 has been adopted as a result of the Women’ Committee’s effort of gender mainstreaming in conflict situations. The applicability of the GR30 is very broadly discussed under the sub themes such as territorial and extraterritorial application of the convention, application of the convention to state and non-state actors, convention and the Security Council agenda on women, peace and security, convention and conflict prevention, conflict and post-conflict situations, women in conflict and post-conflict contexts.

Breaking its long-term silence, through GR 30, Women’s Committee focuses on covering the “application of the convention to conflict prevention international and non-international armed conflicts, situations of foreign occupation, as well as other forms of occupation and the post-conflict phase” To carry out the aforesaid methodology, Women’s Committee adopts the best possible methodology by applying women’s rights law and international humanitarian law complementarily.

In the research, the author discusses four themes to prove the research objectives aimed towards recognizing GR 30 as an effective mechanism to remedy women in armed conflict situations.

Firstly, through GR 30 Women’s Committee has been progressively realized the relationship between international humanitarian law and women’s human rights law. The aforesaid combination which has been a “long-term, unidentified norm” to the Women’s Committee finally came into light as a result of adopting of GR 30. International humanitarian law and women’s human rights law play complimentarily to fill the gaps that would occur in absence of each other. It is clear that when there is one law complementing on the other that would cover all the situations of women in armed conflict which could not be covered only by international humanitarian law or women’s human rights law separately.

For example, international humanitarian law is to protect human rights during conflict situations. The core-norms of women’s human rights law are equality and non-discrimination. GR 30 extensively discusses on the nature of armed conflicts to which GR 30 is applicable in relation to international humanitarian law principles. Given the complex nature of the armed conflicts in different contexts the inclusion of such broad and precise interpretations on armed conflicts in GR 30 is commendable.

One of the key elements of the international humanitarian law aspects in GR 30 is that its applicability to state actors as well as to non-state actors. Especially, given the complex nature of the current armed conflicts, non-state actors are playing a contributory role in shaping the threshold of violations of human rights law norms. International human rights law, in GR 30 taking steps, even ahead of Geneva Conventions, covers widely on

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118 Supra note at 2
119 “…the recommendation covers other situations of concern, such as internal disturbances, protracted and low-intensity civil strife, political strife, ethnic and communal violence, states of emergency and suppression of mass uprisings, war against terrorism and organized crime, that may not necessarily be classified as armed conflict under international humanitarian law and which result in serious violations of women’s rights and are of particular concern to the Committee.” GR 30 at Para. 4
certain actors by whom the rights of women in armed conflict could be possibly violated. On the other hand, there is another facet in the same development, which is CEDAW’s recognition of binding obligations on non-state parties for violation of women’s human rights. In the aforesaid ideology, the two laws reinforce not only as gap fillers but parallel to each other seeking of further development in the applicability.

On the women’s rights law aspects, the equality and non-discrimination are the key elements of CEDAW. The concept of “substantive equality” is ensured in GR 30. The interpretations given in GR 30 must be carried out in light of the concept of substantive equality and non-discrimination between men and women.

Secondly, it focuses on the other branches of law such as refugee law and especially on the international criminal law to end impunity. It is very clear that international humanitarian law aspects in GR 30 cover criminal law dimensions on enforcing penal laws to protect violations on women’s human rights in the armed conflicts. Currently, international criminal law is mainly based on the concept of individual criminal liability which is strong enough to combat impunity of individual perpetrators.


120 “Women’s rights in conflict prevention, conflict and post-conflict processes are affected by various actors, including States acting individually (e.g., as the State within whose borders the conflict arises, neighbouring States involved in the regional dimensions of the conflict or States involved in unilateral cross-border military manoeuvres) as well as States acting as members of international or intergovernmental organizations (e.g., by contributing to international peacekeeping forces or as donors giving money through international financial institutions to support peace processes) and coalitions and non-State actors, such as armed groups, paramilitaries, corporations, private military contractors, organized criminal groups and vigilantes.” GR 30, at Para. 13.

121 Supra note at 6


123 “Under the Convention, States parties’ obligations to prevent, investigate and punish trafficking and sexual and gender-based violence are reinforced by international criminal law, including jurisprudence of the international and mixed criminal tribunals and the Rome Statute of the International Criminal Court, pursuant to which enslavement in the course of trafficking in women and girls, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity may constitute a war crime, a crime against humanity or an act of torture, or constitute an act of genocide. International criminal law, including, in particular, the definitions of gender-based violence, in particular sexual violence must also be interpreted consistently with the Convention and other internationally recognized human rights instruments without adverse distinction as to gender.” GR 30, Para. 23.

124 GR 30 at Para. 86.

125 Ibid at Para 25
that have been discussed in GR 30 in order to provide the policy framework for advocacy regarding women, peace and security.

In light of the above mentioned facts, it is clear that GR 30 is a progressive step forward in women’s rights law in order to protect women in conflict situations. Especially, the theory of complimentarity adopted by the Women’s Committee in GR 30 through international humanitarian law, refugee law, international criminal law and other human rights law aspects such as Thematic Resolutions of the U.N. Security Council are crucial in the above context.

III. Conclusion

Women’s Committee has been silent on the women in armed conflicts for nearly three decades and adopting of GR 30 could be recognized as “breaking the silence” that was very much needed by the women around the world who are caught up in conflict and post-conflict situations.

Further, the methodology adopted by GR30 in relation to the human rights law framework is commendable in that it follows the theory of complementarity in its attempt to fill up the gaps and cover all the dimensions of women in conflict situations. Finally, CEDAW after the third decade of its adoption has been able to progressively address the women in conflict situations through GR 30 breaking its long-term silence.

IV. References

Journal Articles:


U.N. Documents

Jurisprudence of the Committee on the Elimination of all forms of Discrimination against Women

Other Conventions

iii) Geneva Conventions of 1949 and its Additional Protocols of 1977
Eating Disorders: Traumatic Context & Interventions
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Abstract:

Historically, women's eating disorders have been illustrated with such terms as "chlorosis," "neurasthenia" and "hysteria." Contemporarily, we have seen the increase in eating disorders since the 1970's, possibly correlated with the general phenomenon of cultural gender role change. This has been posited to be attributable to the confusion of the terms 'sex' and 'gender.' Sex, or that which is biological, is seen to be either female or male, while gender, or that which is socially given, is masculine or feminine. This traumatic bifurcation implicitly involves a cultural dualism.

The theoretical consideration of eating disorders has been likened to the crystallization of culture, with three cultural axes; the dualist axis, control axis, and the gender/power axis. Dualism can be thought of as a denied dependency on a subordinated or traumatized other. Within this frame, human existence is bifurcated into two territories or substances: that of the body and materiality, as delimited from that of the mental and spiritual. The body is that which must be escaped from, a prison, and an enemy with which to struggle against. In this battle, thinness represents a triumph of the will over the body.

Successful interventions with eating disorders will take into account the multiplicity of these intersecting factors. The range of current treatment interventions in consideration of the traumatic context will be discussed.

Keywords: interventions, gender,

Eating Disorders: Traumatic Context and Intervention

“To lose confidence in one's body is to lose confidence in one's self.”

-Simone de Beauvoir

Context

Bordo (1993) directly addresses the theoretical consideration of eating disorders as the crystallization of culture. This conceptualization of eating disorders is the most encompassing of the theoretical constructs in the clinical and theoretical literature. Bordoholdsthat the phenomenon of eating disorders is synchronous with the three cultural axes, which encompass the eating disordered person's worldview: dualism, control, and gender/power.

The dualist axis is characterized by the view that human existence is bifurcated into two territories or substances: that of the body and materiality, and that of the mental and spiritual. Our cultural forefathers Plato, Augustine, and Descartes' thinking fully promote the dualist perspective. For each of these philosophers, the body is considered to be alien, as a confinement, as an enemy, and that which threatens our attempts at control.

Far from being philosophical, those with eating disorders similarly embrace this perspective in regard to their own bodies. For eating disordered people, the body is that which must be escaped from, a prison, an enemy to struggle against (Bordo, 1993). In this battle, thinness represents a triumph of the will over the body, an essentially dualist stance.
The control axis in informed by the eating disordered person’s experience of her life and hungers as being out of control. The anorectic is usually a perfectionist wanting to shine in all aspects of her life. The anorectic syndrome may occur as a result of her initiating a diet rather casually, often at the suggestion or after a comment from a parent, after which she becomes hooked on the intoxicating feelings of control and accomplishment. Her ability to ignore hunger and pain evidences her control over her own body, often the only control she experiences in her life. For the bulimic, shame and concealment mark the loss of control over the binge eating episode. Attempts to rid the body of the excess food consumed by exercise, use of laxatives, and vomiting characterize the bulimic’s initial feelings of loss of control, then the development of a feeling of impaired control.

The gender/power axis is informed by the fact that women, by far, are more obsessed with their bodies than men, less satisfied with them, and permitted less latitude with them by themselves, by men, and by culture (Bordo, 1993). In support, current statistics claim that 4 out of 5 women are dissatisfied with their appearance, the average American woman is 5'4" tall and weighs 140 pounds, while fashion models are on average 5'11" tall and 117 pounds; making models thinner than 98% of women (Smolak, et al., 1996).

Many anorectics experience the very "female" portions of their bodies, such as breasts, thighs, and stomach, at the time of menarche, as a disgusting appropriation of their body by fat. Amenorrhea is experienced as a relief, and the anorectic strives to maintain the "Peter Pan" shape of her early adolescence (Bordo, 1993). The bulimic places great emphasis on body shape and weight in their self-evaluation, and these factors are often the most important in determining their self-esteem.

Anorectics and bulimics are similar in their fear of gaining weight, in their desire to lose weight, and in their level of satisfaction with their bodies. For Bordo, these symptoms can be seen as an unconscious feminist protest at the limitations of the traditional female role, representing a striving for a cultural shifting of gender role considerations.

**Intervention**

Successful interventions with eating disorders, if we accept Bordo's thesis, will take into account the multiplicity of intersecting factors. Eating disorders are most successfully treated when diagnosed early. Unfortunately, even when family members confront the ill person about his or her behavior, or psychologists make a diagnosis, individuals with eating disorders may deny that they have a problem. Thus, people with anorexia may not receive medical or psychological attention until they have already become dangerously thin and malnourished. People with bulimia are often normal weight and are able to hide their illness from others for years. Eating disorders in males may be overlooked because anorexia and bulimia are relatively rare in boys and men.

Consequently, getting--and keeping--people with these disorders into treatment can be extremely difficult. In any case, it cannot be overemphasized how important treatment is—the sooner, the better. The longer abnormal eating behaviors persist, the more difficult it is to overcome the disorder and its effects on the body. In some cases, long-term treatment may be required. Families and friends offering support and encouragement can play an important role in the success of the treatment program.
If an eating disorder is suspected, particularly if it involves weight loss, the first step is a complete physical examination to rule out any other illnesses. Once an eating disorder is diagnosed, the clinician must determine whether the patient is in immediate medical danger and requires hospitalization. While most patients can be treated as outpatients, some need hospital care. Conditions warranting hospitalization include excessive and rapid weight loss, serious metabolic disturbances, clinical depression, or risk of suicide, severe binging eating and purging, or psychosis.

The complex interaction of emotional and physiological problems in eating disorders calls for a comprehensive treatment plan, involving a variety of experts and approaches. Ideally, the treatment team includes an internist, a nutritionist, an individual psychotherapist, and a psychopharmacologist—someone who is knowledgeable about psychoactive medications useful in treating these disorders.

To help those with eating disorders deal with their illness and underlying emotional issues, some form of psychotherapy is usually needed, by a mental health professional that meets with the patient individually in order to provide ongoing emotional support, while the patient begins to understand and cope with the illness. Group therapy, in which people share their experiences with others who have similar problems, has been found especially effective for individuals with bulimia.

Use of individual psychotherapy, family therapy, and cognitive-behavioral therapy are the common interventions. Cognitive-behavioral therapists focus on changing eating behaviors usually by rewarding or modeling wanted behavior. Family focused therapists intervene with the patient’s family system to change problematic dynamics. Key in any therapeutic approach is to help patients work to change distorted and rigid thinking patterns associated with eating disorders.

NIMH-supported scientists have examined the effectiveness of combining psychotherapy and medications. Researchers found that both intensive group therapy and antidepressant medications, combined orally, benefited patients. In another study of bulimia, the combined use of cognitive-behavioral therapy and antidepressant medications was most beneficial. The combination treatment was particularly effective in preventing relapse once medications were discontinued. For patients with binge eating disorder, cognitive-behavioral therapy and antidepressant medications may also prove to be useful.

Antidepressant medications commonly used to treat bulimia included desipramine, imipramine, and fluoxetine. For anorexia, some antidepressant medications may be effective when combined with other forms of treatment. Fluoxetine has also been useful in treating some patients with binge eating disorder. These antidepressants may also treat anxiety co-occurring depression.

The efforts of mental health professionals need to be combined with those of other health professionals to obtain the best treatment. Physicians treat any medical complications, and nutritionists advise on diet and eating regimens. The challenge of treating eating disorders is made more difficult by the metabolic changes associated with them. Just to maintain a stable weight, individuals with anorexia may actually have to consume more calories than someone of similar weight and age without an eating disorder. This information is important for patients and the clinicians who treat them.

Consuming calories is exactly what the person with anorexia wishes to avoid, yet must do in order to regain the weight necessary for recovery. In contrast, some normal weight people with bulimia may gain excess weight if they consume the number of calories required to maintain normal weight in others of similar size and age.

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PAIN AND POLITICS IN THE COLONIAL NURSERY

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Abstract
Women and family: gender, sex, race and class
Pain and politics in the colonial nursery

My paper will look into the issues concerning the English woman or memsahib and her family in 19th century British India. In particular it will deal with how the memsahib negotiated the difficult task of motherhood in an alien country so far removed and different from the one she was habituated with. The English woman in India has often been criticized for her luxurious lifestyle and her lazy ways however, my paper intends to look at the psychological upheaval that the memsahib had to go through while parting with her children at a very young age. Margaret Macmillan in her book Women of the Raj delineates how the memsahib had to go through the traumatic experience of sending her children ‘Home’ to England while she stayed on in India with her husband. This was necessary in order to protect English children from the ‘contamination’ of India’s climate and her native population. The subtexts of gender, sex, race and class will come into play with the interactions that the memsahib
had with the Indian ayah and wet nurse who took care of the memsahib’s children in India. The wet nurse and ayah were from the lower strata of Indian society and threatened to cross the carefully drawn racial and class boundaries erected by the British in India. My paper will probe these underlying and often neglected subtexts.

Keywords: Motherhood, Ayahs, Racial Prejudice.

Much has been written about the Englishwomen or Memsahibs, of the British Raj in India. It is interesting to note that they started coming from Britain to India in large numbers during the nineteenth century. In fact their numbers were so large and their main purpose of visit to find an eligible English bachelor, that they were known as the ‘fishing fleet’. These young girls, however, would have to be solicitous while choosing a husband, as marriage for most of them was their only occupation and means of survival. Also not one of them wanted to go back to England with the tag of ‘returned empty’, which was the phrase, used for spinsters returning from India. While life in India for a memsahib was considered to be one of great ease and luxury as each memsahib had a retinue of servants, (even the poorer English ladies were able to afford servants) there were also many hardships that she had to silently suffer. India, with its vast canopy of people, customs, unsupportable heat and sometimes-dangerous animals could be an unnerving experience for many a young English girl. It was. However, more than all this physical discomfort the memsahib had to go through it was the psychological upheaval of having to part with her children that affected her the most. My paper will look into the reasons put forward by the British in India as to why their offspring were better off in England than in India. It will also attempt to show the racial colour that tinged these reasons and how the ultimate sufferers were the British family unit in India themselves.

In her book *Women of the Raj*26, Margaret MacMillan delineates why the memsahib had to go through the traumatic experience of sending her children ‘Home’ while she stayed on in India with her husband. “Children were a sign that the British were established in India, that the community was ‘sound’. And the presence of white children showed that British men had firmly abjured the bad old practice of keeping Indian mistresses. The consciousness of the British that they were the ruling caste, that the Raj was going to endure, was somehow demonstrated by the fact that they were propagating themselves.” British children therefore had to be protected and “trained to shoulder their share of the burden of Raj.”

One important way of protecting them was by sending them ‘Home’, which is how the British liked to refer to England. The British felt that life in India would ‘contaminate’ their children and turn them into weaklings and not into manly Englishmen required to rule India and efficient English women required to manage the hearths of the Raj. In *Women of the Raj*, Margaret MacMillan writes “The Indian climate, it was widely agreed, would damage children permanently if they were exposed to it for too long. A child kept in India, warned an eminent physician in 1872, ‘will grow up slight, weedy, and delicate, over-precocious it may be, and with a general feebleness…’ To begin with, food grown in India did not have the same nutritional value as food grown at Home. Moreover, excessive heat did dreadful things to the system. Birch’s Management assured its readers (and over the years they were numerous) that ‘the higher the external temperature, the more susceptible is the system to nervous influences.’ The blood grows thinner and the circulation slower, and that in turn leads to weakened muscles and congestion of the liver, spleen and bowels. The child, the authors added, had a lowered resistance to germs; it would probably also have loose joints and curvature of the spine.”

The great importance attached to the role of English mothers is seen in Ralph Crane and Anna Johnston’s introduction to Steel and Gardiner’s *The Complete Indian Housekeeper and Cook*27. They mention “The future of British children was in the hands of the Anglo-Indian house-mother and, by extension, so too was the future of British civilization.” The expansion of the Empire in the nineteenth century meant that measuring the birth rate, and the health, of the British at home and in the new colonies became crucial to measuring the success and status of the nation and its imperial vigour. *The Complete Indian Housekeeper and Cook* urged its readers to take their responsibilities for maintaining the health and well-being of their household seriously, for the home is ‘that unit of civilization where father and children, master and servant, employer and employed, can learn their several duties’. Ralph Crane and Anna Johnston also write that “Steel and Gardiner consider the effective administration of the private sphere as central to the effective administration of the public sphere, and they confidently assign the memsahib a central role in the colonial enterprise. Towards the close of ‘The Duties of the Mistress’, the mistress-to-be is reminded that ‘an Indian household can no more be governed peacefully, without dignity and prestige, than an Indian Empire’. And this, according to the authors, requires that the boundaries between ruler and ruled be clearly maintained, regardless of the intimacy of their daily contact.” However, maintaining these boundaries between the ruler and the ruled became increasingly difficult especially when it came to the rearing of English children, the future leaders of the Raj. *The Complete Indian Housekeeper and Cook* has very strict advice for

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British mothers regarding this subject. “Indian children are proverbially captious, disobedient, and easily thrown out of gear…. We can only assure every young mother that there is no climactic reason whatever why discipline should be set aside in an Indian nursery, and that it is as possible to insist on cleanliness, decency, and order there as in an Indian pantry or cook-room. The whole secret lies in refusing to listen to the word dustoor, or custom.” Thus, Crane and Johnston aptly sum up that “Steel and Gardiner’s chapter on children reminds us that the domestic sphere provided many opportunities for informal and potentially destabilizing contact between Indians and their imperial rulers, and that the balance of power inside the home was not always as predictable as The Complete Indian Housekeeper and Cook mandated.”

Margaret MacMillan discusses a valid point that India often posed more moral than physical dangers to English children. One of these dangers was the problem of language. Many English children learnt to speak native languages before they spoke their own mother tongue. This fact is corroborated by Nancy Vernede when she says, “We used to talk to our servants in Hindustani. In fact most children learnt Hindustani before they learnt English.” She goes on to explain why this took place. “My parents always told the servants to speak to us in their own language partly so that we could learn the language, and partly because they didn’t want us to keep the chee-chee English accent, a singsong accent rather like Welsh which I believe originated from the original missionaries in India who were Welsh and were the first people to teach English.”

MacMillan also quotes Maud Diver. “You must not expect”, said the novelist Maud Diver, “to keep young minds untainted in an atmosphere of petty thefts and lies”. And they might hear too much: Kate Platt, a doctor who wrote a guide to health in India in 1923, explained, “The Indians themselves live very near to nature, and the events of birth, marriage, and death, as well as the primitive emotions, are discussed openly and without reticence. Children see and hear things which perhaps at the time may make little or no impression, but may have a far-reaching influence on character and temperament.”

In order to avoid such dangers parents, who could afford it, sent their children Home. Margaret MacMillan explains that children who went Home belonged to the elite minority. If they returned to India, they would take their places in the upper levels of the Raj. Whenever possible, their mothers went Home with them; otherwise their relatives or foster-parents were asked to take care of them. Unfortunately, this was typical of the general impermanence of British life in India. Neither children nor parents could develop a web of family relationships such as their contemporaries in Britain enjoyed. As a result British children in India grew up, poised uneasily between India and Britain and belonging to neither.

Except for those wives who took the opportunity to escape from their husbands and from India, their separation was hard on everyone emotionally. For the children, being sent away was the greatest shock of their early lives. It was one from which some of them never really recovered. Therefore, it is hardly surprising that they found it difficult to trust anyone ever again. Macmillan rightly says, “They went from a world that was rich in colour and emotions to one that was cold and cramped. In India, they were spoiled and made much of; in Victorian and Edwardian England, they were thrust into a society where children were seen and not heard. They went to schools where India was to be driven out of their systems and Britain drummed in. Unless their mothers stayed to supervise the process, it was hard for the children not to feel abandoned. Sometimes they reacted by hating their parents, sometimes India; to this day, there are men and women who blame that country for separating them from their parents.”

British mothers in India knew what their children might suffer if they left them at home, and were faced with an impossible dilemma: whether to abandon their husbands or their children. MacMillan explains that if they defied convention to keep the family together in India, as some did, they were accused of sacrificing their children’s happiness to their own. “It is for their welfare,” said Julia Curtis, the wife of a planter, firmly, “and sentiment must be pocketed.” Thus, ultimately, the two great duties of memsahibs were marriage and motherhood, and they knew that they would have to fail at one or the other.

The tie between parents and children was difficult to maintain under such constraints. There were children who saw their mothers or their fathers only once every three or four years. Often, when these children and parents finally met again, they did not recognize each other; the children had grown, the parents were only dimly remembered. A girl whose mother did not recognize her when she finally came to visit her at her English boarding school felt that ‘something snapped in her heart’. A mother, Marjorie Cashmore describes: “We were told by our bishop that we mustn’t keep our eldest child out over the age of five, so when she was only three we had to send her to her granny. That meant that for five years we didn’t see her. In those days it took six weeks to get a letter and by the end of five years when we got her back again she really was a stranger to us.”

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130 Allen, Charles, ed. Plain Tales From the Raj (London, 1975)
MacMillan observes “Motherhood in India was ultimately unsatisfactory for many memsahibs. They had been told that they must bring up their children to be a credit to the Empire—but that usually meant letting others bring them up. The mother who stayed with her husband while her children were at Home or up in the Hills had the comfort of knowing that she had done her duty. She had her memories, as Julia Curtis said sadly, ‘of a few short but exquisitely happy years when she had her babies all to herself.’ She had the brief, dutiful letters written by her children at school. She had their pictures: ‘I could not help noticing’, wrote Monica Campbell at I am coming,’ with a pleasant visitor’s inflection which I was able to sustain on the table in the tent, or above the fireplace in the rest house. It was the photograph of the child, or children at school in England.”

This commonly felt emotion by women was also understood by their men. “The heartaches of separation are ever present in India,” declares Lewis Le Marchand. And this was particularly true of the army. ‘Although the saying is “If you marry the drum you’ve got to follow it,” there are many times when you simply cannot stay with it and you’ve got to be sent away. For the wife it is, “Goodbye, husband, I’ll take the kids up to a hill station and we’ll expect you on leave when we see you.” Deborah Dring an army wife also shares her painful experience “My husband and I were always being separated. I once worked out that in thirteen years we’d only spent three whole years together.”

The loneliness and great sorrow faced by mothers who had sent their children home is well illustrated in this poignant short story A Mother in India by Sara Jeannette Duncan. It vividly describes a mother’s feelings and anxieties about the little girl she is forced to leave in England, with her husband’s family due to the ill health of the baby. The only contact she has with her daughter, for the first four years of her life are the letters sent to her from her husband’s sisters. The mother remarks,

“...They took turns in writing to us with the greatest regularity about Cecily; only once, I think, did they miss the weekly mail, and that was when she threatened diphtheria and they thought we had better be kept in ignorance. The kind and affectionate terms of these letters never altered except with the facts they described—teething, creeping, measles, cheeks growing round and rosy, all were conveyed in the same smooth, pat, and proper phrases, so absolutely empty of any glimpse of the child’s personality that after the first few months it was like reading about a somewhat uninteresting, infant in a book. I was sure Cecily was not uninteresting, but her chroniclers were. We used to wade through the long, thin sheets and saw how much more satisfactory it would be when Cecily could write to us herself. Meanwhile we noted her weekly progress with much the feeling one would have about a faraway little bit of property that was giving no trouble and coming on exceedingly well. We would take possession of Cecily at our convenience; till then, it was gratifying to hear of our earned increment in dear little dimples and sweet little curls. She was nearly four when I saw her again.... At last the drawing-room door and the smiling housemaid turning the handle and the unforgettable picture of a little girl, a little girl unlike anything we had imagined, starting bravely to trot across the room with the little speech that had been taught her. Half-way she came; I suppose our regards were too fixed, too absorbed, for there she stopped with a wail of terror at the strange faces, and ran straight back to the outstretched arms of her Aunt Emma. The most natural thing in the world, no doubt. I walked over to a chair opposite with my hand-bag and umbrella and sat down— a spectator, aloof and silent. Aunt Emma fondled and quieted the child, apologising for her to me, coaxing her to look up, but the little figure still shook with sobs, hiding its face in the bosom that it knew. I smiled politely, like any other stranger, at Emma’s decrepitations, and sat impassive, looking at my alleged baby breaking her heart at the sight of her mother. It is not amusing even now to remember the anger that I felt. I did not touch her or speak to her; I simply sat observing my alien possession, in the frock I had not made and the sash I had not chosen, being crossed and kissed and protected and petted by its Aunt Emma. Presently I asked to be taken to my room, and there I locked myself in for two atrocious hours. Just once my heart beat high when a tiny knock came and a timid, docile little voice said that tea was ready. But I heard the rustle of a skirt, and guessed the directing angel in Aunt Emma, and responded, ‘Thank you, dear, run away and say that I am coming,’ with a pleasant visitor’s inflection which I was able to sustain for the rest of the afternoon.... They took me up to see her in her crib, and pointed out, as she lay asleep, that though she had ‘a general look’ of me, her features were distinctively Farnham.

‘Won’t you kiss her?’ asked Alice. ‘You haven’t kissed her yet, and she is used to so much affection.’ ‘I don’t think I could take such an advantage of her,’ I said.

131 Ibid
132 Ibid
They looked at each other, and Mrs. Farnham said that I was plainly worn out. I mustn’t sit up to prayers. If I had been given anything like reasonable time I might have made a fight for it, but four weeks- it took a month each way in those days—was too absurdly little; I could do nothing. But I would not stay at mamma’s. It was more that I would ask of myself, that daily disappointment under the mask of gratified discovery, for long.

I spent an approving, unnatural week, in my farcical character, bridling my resentment and hiding my mortification with pretty phrases; and then I went up to town and drowned my sorrows in the summer sales. I took John with me. I may have been Cecily’s mother in theory, but I was John’s wife in fact."

This story aptly sums up the dilemma of the young mother- to whom should her priorities belong and it is also the heartrending story of many British mothers in India. My paper discusses how traumatic it was for the young mem-sahib to part with her children. I now wish to look at another important aspect of the memsahib’s life in India. The main reason for English children being sent away Home was the moral threat India posed to them. There was a long hierarchy of servants in the British household as a result of the Indian caste system and the ayah and the wet-nurse were the key figures in the colonial nursery and therefore very often perceived as threats to the mem-sahib. The physical proximity of the wet-nurse to the English baby and very often the emotional proximity of the ayah to the infant was seen as a problematic area and one that threatened the gap between the ruler and the ruled.

In Memsahibs Abroad134, we are told, “The emotions evoked by wet nurses reveals one of the cracks in the smooth façade of colonialism. Received opinion decreed that an Englishwoman was not to nurse her child herself. Instead, native wet nurses were recommended (as were working class nurses at home). These were accused of emotional blackmail as well as other iniquities- a reflection of the anxiety provoked both by the dependence on these women as well as the fear of contamination of the children by the close contact to depraved natives. Mrs. Sheerwood names quite clearly what is at stake in this classic colonial constellation: the life of the Indian baby of the wet nurse. Colonial guilt is projected back onto the native by accusing the wet nurse of deliberately sacrificing her child.”

In Memsahibs’ Writings135, we are told that “ The wet-nurse (dai) was employed by colonial households till about the last decades of the nineteenth century to feed European infants. Unlike in the case of the ayah, there was little chance of strong emotional ties and bonds being formed between the infant and the dai, given the child’s infancy. More importantly, unlike in the case of the ayah, there were heightened elements of class and race exploitation in this relationship, since there was always the real danger that the dai would neglect to feed her own infant, frequently resulting in its death.” Emma Roberts, a memsahib, points out that the women suffered loss of caste by feeding white babies. Roberts also complains about the extortionist attitudes of these women at extracting high salaries. Julia Maitland, another memsahib, echoes these complaints about the ‘amah’s’ (wet-nurse) tantrums because of her caste. According to her, while dais are neglectful of their own infants, they will blame the memsahib if anything happens to them. In other words, these ‘native’ women are projected in typical colonial fashion as cunning and exploitative.

The English mothers were also guilty of racial prejudice towards the wet-nurses of their children. Many of them thought that the native woman’s milk would contaminate an English child’s character. This thought was also common to English men as well. Sir Bampfylde Fuller voiced the concerns of many when he warned: ‘India enfeebles white races that cling to her breasts’, using the metaphor of the wet-nurse to explain the dangers of the Indian climate for European constitutions. In this context Margaret Macmillan writes “ Nineteenth-century speculations about the effect of climate and environment on racial character made a profound impression on the British in India. Mothers made their children wear tophis lest the Indian sun burn its way into their brains. Many had a deep aversion to using Indian wet-nurses: who knew what the children might imbibe along with Indian milk?” However, it is interesting to note that Steel and Gardiner in their famous handbook on colonial housekeeping, The Complete Indian Housekeeper and Cook have sternly chided the English woman for this attitude.

On the other hand the English mother’s relationship with the ayah of her child was ambivalent. Ayahs were the closest contact that the average memsahib had with ‘native’ India. While many had high praise for her devotion, some held the ayah to be far too indulgent and incapable of imposing the necessary discipline on the child. Hence British nannies were often recommended, as by Steel and Gardiner in their handbook on colonial housekeeping. However, the closeness of colonial children to their ayahs is an indisputable fact. Colonial children adored their ayahs and retained warm memories of them long after everything else Indian had passed out of their lives. Often they grew up speaking only the vernacular, as Rudyard Kipling famously recalled about his own childhood:

In the afternoon heats before we took our sleep, she or Meeta (their bearer) would tell us stories and Indian nursery songs all unforgotten, and we were sent into the dining room after we had been dressed, with the caution ‘Speak English now to Papa and Mamma.’ So one spoke ‘English’, haltingly translated out of the vernacular idiom that one thought and dreamt in. In Plain Tales from the Raj, we are given glimpses into the feelings of British men and women towards their ayahs. It is interesting to note that there is no trace of animosity, the only feelings evident are those of gratitude and nostalgia.

‘I grew up in bright sunshine, I grew up with tremendous space, I grew up with animals, I grew up with excitement, I grew up believing that white people were superior.’ Every chota sahib or missy baba whose first years were spent in India would echo such sentiments- be they the sons and daughters of state governors or, as in this instance, the son of a British army corporal…. Their first common image is of ayah.

The figure of the native nurse dominates the ‘Anglo-Indian’ nursery, usually in sari and blouse and ‘covered in nose-rings with bangles on her wrists and ankles: when she was moving about you could hear her a mile off’. Archetypal ayahs are always ‘very gentle, sweet-natured women with beautiful hands, very gentle and beautiful in their movements.’ They had their own hierarchy, headed by the Madrassi ayah, the cream of ayahs, mission-educated and thus given ‘a good many civilized ideas.’ The virtues of the trained ayah were considerable. ‘They had this capacity to completely identify with the children they looked after,’ explains Vere Birdwood, ‘and it seemed as if they could switch on love in an extra-ordinary way. They were so dedicated to their work, in a sense so possessive of their children that it was almost impossible for a good ayah to yield up her charge even for a few hours.’ One such paragon was Lewis Le Marchand’s ayah in South India: She was very fat and Madrassi and very, very oily about the hair. Her toes were quite enormous and cracked like dry wickets that had had the sun on them for a few days. If the day chokidar didn’t give me another biscuit with my early morning tea or if there was any sort of trouble, I used to go to her and she usually managed to solve it. I didn’t know her name; I called her ayah. Sometimes, being a fairly naughty boy, I would anger her, but she’d never show it. She’d turn her back and go and sit down cross-legged on the floor of the veranda and take out her knitting, and the more I called her or the more I was naughty or rude, the more she ignored me, until finally I would come along and say, ‘Ayah, I’m sorry,’ and then all would be well. Ayah ministered after me during the day and very often during the evening, but it was mother’s privilege- heaven knows why- to bathe me and put me to bed. Ayah used to wait and, if necessary, sleep outside the doors of her children’s rooms, lying down outside on the mat until such time as my mother would come along and say, ‘You can go, ayah, little master’s asleep.’ Thus, if ayahs had a fault it was that they spoilt their charges and that they never said no. England therefore provided both temporary and final solutions; imported nannies or governesses and exported children.

In conclusion, it is interesting to see the darker and more difficult side of the life of the English woman in India. While the common practise has been to criticize the imperious ways of the memsahib in India my paper attempts to see behind the closed doors of the colonial world and into the hearts of the memsahibs. Though it cannot be denied that often their hearts and minds emanated racial hues but life for the English woman in India was a constant balancing act and the pain and politics surrounding the colonial nursery was the primary reason for it.

Allen, Charles, ed. Plain Tales From the Raj (London, 1975)
Using Project Work in American Culture Teaching
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Abstract
Many teachers have recognized the needs to use project work in cultural teaching since project work was introduced in language teaching (Beckett, 2002). However, taking full advantage of the potential benefits of project work in cultural teaching requires both a change of perspective and adoption of communicative language teaching approach. In this study, a theoretical background of relevant areas will be given, especially an understanding of cultural teaching and project work. The presenter will also provide a sample of project work used in an American culture class and recommend a number of useful tips when using project work in American culture teaching. Participants of the workshop will be encouraged to give comments on the sample and tips provided so as to be able to employ project work to suit their students and teaching contexts.

Key words: Project work, American culture, cultural teaching and learning.

1. Introduction
As defined by Richards (1997), project work as “an activity in which EFL learners are asked to complete an assigned task. This activity requires learners work individually or in groups to prepare for the project.” Since project work was introduced in EFL classrooms by Krashen (Beckett, 2002), it has been applied by many language educators. According to Legutke & Thomas (1991), using project work in language teaching can create “a close relationship between the target language and the knowledge of a specific field.” Additionally, using project work allows teachers to provide learners with opportunities to develop their language proficiency thanks to their communication and interaction when doing their project (Fried-Booth, 2002). Much more importantly, by using project work, language teachers can achieve different objectives of a language class such as motivating students’ creativity, making them more confident, supplementing their grouping skills, developing their critical thinking, their learning skills and creating a friendly learning environment for learners. Hedge (2002) states that projects are extended tasks which usually integrate language skills by using a number of activities. These activities are combined in working toward an agreed goal and may include the following: planning; gathering of information through reading, listening, interviewing, and observing; group discussion; problemsolving; oral and written reporting; and display. Project-based learning is similar to task-based learning to a certain degree, but it is larger than a single task.

The following parts will briefly state characteristics and effects of using project work as well as how to use it in American culture teaching. A sample of using project work in American culture class will also be presented to illustrate the way to use project work in such classes.

2. Materials and methods
2.1. Project work in language teaching
The use of project work in language teaching together with its various effects has been confirmed by many researchers. The main characteristics and effects of using project work in language were summarized by Stoller (1997) as followed:

- Project work focuses on content learning through language learning.
- It is student-centered with the teacher playing a role in offering support and guidance throughout the process.
- It is cooperative rather than competitive. Therefore, students can work on their own, in small groups, or as a class to complete a project.
- It leads to the authentic integration of skills and processing of information from varied sources mirroring real-life tasks.
- It culminates in an end product that can be shared with others so that all members of the group can work together and complete the task.
- Finally, it is potentially motivating, stimulating, empowering, and challenging. When doing project work, students can build up confidence, self-esteem, and autonomy as well as improve their language skills, content learning, and cognitive abilities.

2.2. Classification of project work
There are diverse configurations of project work by different language educators. Henry (cited in Stoller, 1997) proposed three types of projects according to the nature and sequencing of project-related activities namely structured projects, unstructured projects and semi-structured projects. Structured projects are determined, specified, and organized by the teacher in terms of topic, materials, methodology and presentation. Unstructured projects are defined largely by students themselves. Semi-structured projects are defined and organized in part by the teacher and in part by students.
Haines (1989) and Legutke & Thomas (1991) classified projects into five types according to data collection techniques and sources of information: research projects, text projects, correspondence projects, survey projects and encounter projects. There are also three types in terms of how final products are presented (Haine, 1989), production projects, performance projects and organizational projects.

2.3. Steps in using project work
The ten steps of using project work is introduced by Stoller (1997) as follows:
Step 1: Students choose a topic for the project with the teacher’s help.
Step 2: Students and the teacher decide the final product of the project.
Step 3: Owing to their teacher’s help, students do the project steps by steps.
Step 4: The teacher reminds students of information collection.
Step 5: Students collect necessary information.
Step 6: With the help from the teacher, students gather and analyze information collected.
Step 7: Students collect and analyze data.
Step 8: Teacher emphasizes on the language requirement of the final product.
Step 9: Students give a presentation about their project.
Step 10: Students evaluate their project.

All the objectives of the project and results of completing a project can be summarized by the project framework proposed by Beckett and Slater (2005).

According to Beckett and Slater (2005), the purpose of this framework is to help learners keep up with the project during the time of doing it. At the same time, the framework also allows students to arrange what to do basing on an easy-to-use sample. Furthermore, the framework aims at reminding learners of different parts of the project that they and their teachers have designed and selected. In other words, it is utilized so as to make learners be aware that all parts of the project follow the teaching objectives that can help them to improve their language proficiency and their major knowledge.

3. Results and discussion
3.1. Using project work in American culture teaching
According to Krashen (1981) the most effective way is learning and using language skills at the same time. Consequently, American cultural course is designed to aim at developing student English proficiency and also enhancing their knowledge about the culture of an English-speaking country, America, so that they can become more confident in communicate in their real life later on. Language learning now requires efforts of both teachers and learners in which teachers play the role of instructors whereas learners are language users. One of the methods that can help teachers and students to gain their aforementioned objectives is using project work in teaching and learning.
Project work is a tool that can help language learners become more active and cooperative with each other as well as have much more experience. However, when using project work in American culture classroom, it is essential that the ten steps proposed by Stoller (1997) be changed to be suitable for the nature of an American culture course. Consequently, the ten steps flowing should be taken into consideration:

**Step 1:** Teacher assigns a topic for the project
All of the topics chosen are based on the main content of a lesson in the syllabus.

**Step 2:** Teacher decides the final product of the project
The final products can be power point presentations, a poster, a trial, a play, a game show, so on and so forth.

**Step 3:** Students do the project with the teacher’s help.
At the beginning of the course, students are briefly introduced about the course, course book, and other resources of information. After each project has been assigned, students are guided to plan the project, find the information, and divide work among group members.

**Step 4:** The teacher reminds students of requirements for information collection.

**Step 5:** Students collect needed information

**Step 6:** The teacher help with gathering and analyzing information (if necessary)

**Step 7:** Students analyze the data, complete the project and the project framework.

**Step 8:** The teacher emphasizes on the language requirement of the final product of the project.

**Step 9:** Students give a presentation

**Step 10:** Teacher and students evaluate the project.

During the time of completing the project, it is essential that the teacher should:

- Motivate students using the target language to look for the necessary information
- Help students to gain more knowledge about the topic assigned via the target language
- Help students to access different sources of materials about the assigned topic
- Provide supplementary materials if necessary
- Encourage students to be involved in doing the project and help them to be more confident when learning English.

### 3.2. A sample

In American culture class, students are encouraged to fulfill a great deal of projects, from the mini-projects to the big one. A sample of project work used in teaching American culture is presented in the following part.

**Name of the course:** American studies

**Course book:** A glimpse into America, compiled and edited by Dung, L.K. and Ha, N.T. (2013), University of Education Publishing House, Vietnam.

**Students:** English major, third-year students (At their semester six)

**Topic:** American holidays

Two weeks before the lesson, students were required to do a project named an exhibition of uniquely American holidays. The students were asked to work in groups of five or six, collect information about a uniquely American holiday, and then prepare for an exhibition about that holiday. The final products included a power point presentation and/or a poster to briefly introduce about the holiday, certain artifacts of the holiday, and an oral presentation or a short play about that holiday. Each group was allowed to have a bulletin board for creation and display of the team’s posters and artifacts. In this project students had the opportunity to use the knowledge they had gained about the USA. So, the project was used with a dual focus: content (on American studies) and the language, which is relevant to that content. The projects required the knowledge of the history and traditions, culture of the State. After two weeks of preparation, students will present their display to the Exhibition Board (the rest of the class and the teacher.) Each person on the team presented the part of the display that they had created. The research team leader provided an introduction and directs questions at the end of the presentation to the member of the team who researched that topic.

The ten steps in doing this project will be presented in the following part:

**Step 1:** Teacher assigned a topic for the project
The topic for the project was uniquely American holidays.

**Step 2:** Teacher decided the final product of the project
The final products included a power point presentation and/or a poster to briefly introduce about the holiday, certain artifacts, and an oral presentation or a short play of the holiday.

**Step 3:** Students did the project with the teacher’s help.
After the discussion, students decided to

1. Collect information from the course book and certain website like elcivics.com
2. Assign specific tasks within groups;
3. Their specific tasks included: Collecting information; drawing pictures, maps, etc.; arrange texts and visuals; coloring; presenting information in the poster or powerpoint presentation format and giving presentation or acting out.
4. Design a project framework;
(4) Prepare for the final product. During that time, the teacher gave feedback to the information that students had collected and provided them help when they were in need.

Step 4: The teacher reminded students of the requirement for information collection.

Step 5: Students collected needed information.

Step 6: The teacher helped with gathering and analyzing information (if necessary).

Step 7: Students analyzed the data and complete the project.

Step 8: The teacher emphasized on the language requirement of the final product of the project.

Step 9: Students gave a presentation.

After two weeks of preparation, students would present their display to the Exhibition Board (Each person on the team presented the part of the display that they created or took part in the play directed by themselves.)

Step 10: Teacher and students evaluated the project.

Other groups were asked to evaluate the project basing on an evaluation sheet provided before the presentation. Then, the teacher gave final comments on the strength and weaknesses of the presentation.

When being interviewed for their reflection, almost all the class members thought that they had acquired a great amount of knowledge about certain American holidays. Furthermore, they had improved their language skills and their cooperation with their classmates during the time of doing the project.

3.3. Conclusion

This piece of writing so far has presented project work in language learning and teaching in general and a sample of using project work in American culture class in specific. It is hoped that the study can contribute to the assertion that project work is an effective tool in integrating language learning, specific knowledge and language skills in one classroom. It is significant that further research should be done in order to confirm the effective use of project work in learning and teaching.

REFERENCES