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TABLE OF CONTENTS

ISBN: 978-1-911185-77-2 (Online)

ISBN: 978-1-911185-77-2 (Online)

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A RESEARCH-BASED MODEL OF CORPORATE SOCIAL RESPONSIBILITY IN NIGERIA: THE CASE FOR MANDATORY DISCLOSURE REGULATION

ITOTENAAN HENRY OGIRI

ABSTRACT

In the past, most attempts towards mandatory Corporate Social Responsibility (CSR) disclosure did not yield much result. However, there is growing body of evidence in the literature indicating that an increasing CSR disclosure in recent years has been the result of obeying government regulations. While voluntary CSR approach remain popular, scholars have raised doubts as to the effectiveness of voluntary approach of CSR in meeting the disclosure needs of stakeholders. This original study employs a qualitative research methodology. Primary data were sourced from participants through semi-structured interviews and analysed with the aid of NVivo software. Our results show participants preference for mandatory CSR disclosure regulation. Results from this study also highlight the desire to protect organizational legitimacy by firms, and lack of CSR awareness in Nigeria. From a public policy perspective, the study developed a framework for the implementation of CSR "comply or explain" model in a developing country context.

Key words: Corporate Social Responsibility (CSR), Mandatory Disclosure, Stakeholder, Nigeria

INTRODUCTION

The history and evolution of Corporate Social Responsibility (CSR) practice and reporting is well documented from a variety of perspectives (Moura-Leite and Padgett, 2011; Bani-Khalid and Ahmed, 2017). From the extant literature, CSR disclosure has attracted attention from regulatory bodies and academics over the past few decades (Wang et al., 2017). A frequent argument in the CSR debate centres on the need (or otherwise) for CSR reporting to be mandatory, with a lack of voluntary response anticipated in the absence of relevant legislation (Ramdhony, 2018). However, from the regime theory perspective, it is unhelpful to differentiate between mandatory and voluntary compliance when dealing with the complexities of sustainability (Waagstein, 2011). It is, rather, the development and support of effective practice that is crucial, not the excuse to hide behind legal wrangling (Frame, 2005). Also, from the CSR literature, the debate is on-going about which approach CSR initiatives should adopt. But whether a particular CSR initiative adopts a voluntary or a mandatory approach is still dependent on the 'socio-economic and political will' of key CSR actors to implement the policy. As Prieto-Carron et al. (2009) point out, voluntary initiatives may have mandatory aspects and national regulatory frameworks may incorporate the use of voluntary instruments.

Despite the diverse views in the business community regarding what mode CSR approach should take, there is growing body of evidence in the literature suggesting the need for regulation due to the unreliability resulting from CSR voluntary disclosure (Wang et.al; 2017). While some countries including, for example, the UK, Ireland and Denmark (see Orbie and Babarinde, 2008) have favoured the soft-intervention polices to encourage company involvement in governance challenges affecting the community, there is an increasing number of others that have enacted tougher legislations to help promote CSR, as seen in India, Mauritius, Malaysia and South Africa (Dharmapala and Khanna, 2016; Ramdhony, 2018; Waagstein, 2011; Ramlall, 2012). This research, therefore, revolves round the role of government in instituting regulatory framework for corporate social responsibility disclosure.

As the main actor in any society, government has a role to play especially with respect to putting measures in place to promote CSR disclosure. This study is underpinned by the legitimacy theory, perceived as an operational resource on which organisations are dependent for survival (Vourvachis, 2008). In addition, the stakeholder theory is used as a complimentary theory since it provides a platform upon which stakeholders' demand, for instance those of local communities, can be examined in relation to their power to grant or withdraw the social license to operate (Mitchelle et al., 1997). While this study adopts the legitimacy theory as a social-based motive, its strength for developing a customized CSR model for a developing country like Nigeria is also supported by the relative increase in the number of studies into motivations for environmental disclosures testing for or taking a legitimacy focus (Castello and Lozano, 2011). The present study adopts a societal perspective, with implications for organisational legitimacy. As local communities continue to engage MNCs operating in Nigeria for a fairer treatment regarding their welfare and the environment, the relevance of the social licence to operate model is brought to fore.

LITERATURE REVIEW

The case for mandatory CSR Disclosure

In the past, most attempts towards mandatory CSR disclosure did not yield much result (Rosser and Edwin, 2010). However, studies have shown that an increasing CSR disclosure in recent years has been the result of obeying government regulations (Kurniawan and Wibowo, 2007; Iaonnou and Serafeim, 2017). Now a days, so many companies all over the world are reporting on their corporate social responsibility activities in their annual reports and in most of the cases this is voluntary disclosure (Alkababji, 2014). Despite the increase in disclosure, voluntary initiatives have been met with increasing scepticism in regards to their ability to effectively motivate changes to corporate behaviour (Keith, 2010). As a result, calls have been made in countries like Canada, Denmark, the USA and other developed countries for such voluntary measures to be supported by binding regulatory measures (Gopalan and Kamalnath, 2015). According to Hui and Browrey (2008), many private sector organisations use voluntary environmental performance and management reporting as a means of promoting their social agenda, and partially to address the growing concern of the public about the impact of the organisations' operations on the environment.

The inability of the voluntary CSR approach in meeting the disclosure needs of stakeholders has seen a number of scholars researching into alternative CSR disclosure models. For example, studies by Iaonnou and Serafeim (2017) explore the implications of regulation mandating the disclosure of environmental, social and governance information in China, Denmark, Malaysia, and South Africa(see also, Ramlall, 2012). Findings from the afore-mentioned studies show significant increase in firms' CSR disclosure following government regulations. Recently, India happened to be the only country that has passed a law on mandatory CSR expenditure ((Pandey and Pattnaik, 2017). Adding to the growing debate about the need to support CSR with legislation, Dharmapala and Khanna (2016), notes that the passage of the mandatory law that requires Indian companies to spend at least 2% of their net profit on CSR related activities has seen a significant increase in CSR disclosure.

While mandatory CSR disclosure does not require firms to spend on CSR, recent studies on Chinese Firms by Chen et al, (2018) show that mandatory CSR disclosure changes firm behaviour and generates positive externalities to society at the expense of shareholders. Also, while corporate social responsibility involvement over different economies and cultures vary, the CSR reporting of the involvement, both voluntary and mandatory, gets importance in each part of the world due to the pressures from different stakeholders, especially government, international organization and community (Mamum et al., 2017). The expectations of consumers, employees, investors, partners of business, civil society Organizations and local

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communities regarding the role of companies have increased, hence the demand for increase transparency and accountability, not only in the daily operation of enterprises, but also in terms of how its operations affect the Society (Mohammed et al., 2014). According to Criado-Jimenez et al (2008), voluntary reporting has been characterised by a dearth of neutral and objective information such that the advocates of social, economic and environmental responsibility recommend that it be made compulsory. As regulation improves and enforcement expectations rise, it becomes more difficult to dismiss compulsory reporting norms (Criado-Jimenez et al, 2008).

Apart from India, a number of countries are either enacting legislations or calling for regulations to guide CSR disclosure. Mauritius, for example, adopted a CSR levy in which profitable companies are to commit 2% of their prior year profits to CSR activities (Ramdhony, 2018). Also, in Malaysia, a study by Abdillah and Husin, (2016) finds an upward trend of CSR reporting after the launched of Bursa Malaysia CSR framework as well as the Bursa Malaysia mandatory requirement to disclose CSR information. In the USA, stakeholders are proposing mandating a 1% CSR spend by firms, similar to the innovative law adopted by India, which, as argued by Gopalan and Kamalnath (2015) could usher in a host of social innovation and enterprise, generate jobs, reduce inequality, foster engagement, and ultimately deliver invaluable social and economic benefits. As a result of poor environmental disclosure practices in the annual reports of firms in the textile industry in Bangladesh, Ullah et al (2014) study recommends government and other regulatory authorities taking necessary steps in compelling and motivating all textile companies in Bangladesh in addressing environmental issues in their annual report. In South Africa, the King III principles have made independent CSR assurance a de facto mandatory requirement, albeit on an "apply or explain" basis (Ackers and Eccles, 2015). King III is driving the institutionalisation of CSR assurance practices in South Africa, as evidenced by the growth in CSR assurance since the implementation of the principles.

Voluntary CSR assurance practices have resulted in inconsistent application of CSR assurance practices, impairing the ability of stakeholders to understand the nature and scope of CSR assurance engagements (Ackers and Eccles, 2015). In Sweden, Norway, Denmark and Australia, environmental reporting is presently mandatory for public corporations (Cecil, 2010). As Kloppers (2013) opines, a purely voluntary approach to CSR without any legislative intervention will not succeed. More importantly, some "companies utilise their annual report's voluntary disclosures as a means of influencing society's perception of their operations for legitimacy purposes" (Haji and Ghazali, 2012 p.101). The inability of the voluntary CSR approach has seen several scholars suggesting that regulatory pressure is a necessary driver to stimulating organizations to raise the level of their social responsibility (Haigh and Jones, 2005; Yao et al.,2011). While regulatory pressure could serve as early warning signal when companies show sign of lack of transparency and accountability, a number of challenges still limit stakeholder access to what corporations are doing for society.

Despite these challenges to CSR, "at present there is no law in Nigeria that makes it mandatory for companies to either incorporate environmental preservation into their company policies or to enforce the compliance thereto" (Mordi et al., 2012 P.5). While sceptics of CSR argue that the business of business is business, and enterprises have no business dealing with social issues (see Friedman, 1970), there is growing body of evidence in the academic literature that suggests that CSR and the bottom line are not mutually exclusive, especially as enterprises are a product of society (Orbie and Babarinde, 2008). From the foregoing argument, while the practice of CSR remains a voluntary initiative, government mandatory disclosure regulation, as argued by Wang et al., (2017); Haigh and Jones, (2005); and Yao et al.(2011), tends to

improve the overall CSR reporting quality and consequently increases firms' response to the growing needs of society.

This study, therefore, seeks to examine how mandatory regulation can improve CSR disclosure and attempts to develop a 'comply or explain' model in which Firms are free to voluntarily practice CSR but are mandatorily required to disclose their activities, otherwise, explain why no CSR activity is reported. In the following sections, the methods used in the study are discussed.

METHODS

This research is a qualitative study and adopts a post-positivist philosophical paradigm. Primary data were sourced from participants through semi-structured interviews designed to capture deep phenomenological insights into how participants view mandatory CSR disclosure as a practice that could help shape ethical behaviour of firms operating in Nigeria. Sample population for this study include: representatives of government – officials of the Nigeria Extractive Industries Transparency Initiatives (NEITI) who receive and review annual reports of MNCs; representatives of multinational oil companies – whose activities form the core of CSR issues in Nigeria; representatives of Civil Society Organizations – who act as watch dog and whistle blowers; and representatives of local communities – chiefs and Community Development Committees (CDCs) who are the custodians of cultures and traditions of the people. The distribution of interview participants across the four population groups is to ensure data reliability.

In all, 16 participants (4 per each category) were selected purposively for this study. Those selected has the pre-requisite knowledge and understanding of the need and how CSR is responding to the environments in which they live and/or operate. As the emphasis is on depth and not breath in a qualitative research of this nature, the number (of 16 participants) is considered adequate as a smaller population size allows for deeper inquiry and response from participants. In this research, interviews conducted were face-to-face and each interview lasts for an average of 50 minutes. Also, interviews were audio-recorded with the permission of participants, which were later transcribed with the aid of device into texts suitable for analysis. The NVivo 11 software was used for the analysis. The findings of this study are presented in the table below.

FINDINGS AND DISCUSSION

In this section, the key findings of the study are discussed. From the analysis of interviewees' responses, four thematic categories emerged and are shown in table 1 under appendices below:

All four thematic categories attempts to provide answers to the two main research questions viz: (i) Is voluntary CSR disclosure by firms in Nigeria capable of meeting the needs of stakeholders? And (ii), should Firms in Nigeria be made to mandatorily disclose their CSR activities? Participants show clear preference for mandatory CSR disclosure. More importantly, a number of outcome emerged from this thematic category including: increase level of ethical conduct by firms leading to increase transparency and commitment to social and environment issues. Also arising from the desire for mandatory CSR disclosure is the increase stakeholder engagement which can potentially minimize conflicts and disagreements while promoting firms – stakeholder relationship. Participants also favour mandatory CSR disclosure regulation as the majority of them believe that the practice will promote healthy completion which will lead to better care for the environment through improve infrastructural development. For instance, participant CS2…. states as follows:

> '*I am of the view that companies in Nigeria should be made to mandatorily disclose their corporate social responsibility activities .....let us not deceive ourselves government alone cannot provide the needs confronting society particularly host communities where*

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exploration activities take place. With mandatory CSR disclosure, there will be increased competition among companies'.

Participant CS2 believe that while companies would ordinarily support voluntary CSR activities with a view to fulfilling its moral or social obligations, experience from the civil society interactions with companies operating in the Niger Delta region of Nigeria with lots of CSR related issues, show that such commitment is rather rarely exercised. Another thematic category that emerged from the NVivo analysis is that CSR as a practice in Nigeria is discretional with both practice and disclosure following a voluntary regime. As a consequent of this thematic category, most activities tagged as CSR are actually not, but rather philanthropic or promotional activities. Participant LC1 captured the view of the majority of the respondents thus:

'Multinational firms in Nigeria do not disclose much of what they do with so-called corporate social responsibility. So-called because issues of CSR is only seen or heard over the radio and television stations. On the ground not much is felt. Yes CSR practice is voluntary but the fact that stakeholders don't know what firms are doing……is an indication that firms don't attach much importance to it'.

Furthermore, results of our study show that CSR reports are scanty and haphazardly compiled. Monitoring is a task that is extremely difficult as CSR disclosure is not evident in most Organizations in Nigeria. As companies continue to exercise discretion in what to, and what not to report, CSR is increasingly becoming unpopular within the wider society. The lack of awareness of the need and importance of CSR practice has giving rise to some misconception. This revelation confirms findings by Mordi et al. (2012) which suggest that there is diversity in terms of how CSR is understood and experienced in Nigeria. Furthermore, the findings also show that majority of the respondents see CSR as an infringement on company profit. The fourth thematic category that emerged from our study is organizational legitimacy. The analyses suggests that most organizations are willing to engage in CSR activity and disclosing same if they envisaged that through it, they could improve their image. Also, a good public perception about an organization guarantees their social licence to operate. In the Niger Delta region of Nigeria for example, host communities perceive companies that respond positively to their needs as responsible corporate citizens. As respondent MN3 stated:

"*Yes, I have said it before that what makes companies want to disclose their CSR activities is to build a good name. A good name is an asset to any organization. Companies want to avoid negative reputation so as to continue to enjoy legitimacy'.*

Despite what seems to be a popular view regarding CSR disclosure and legitimacy motives, some participants, however hold contrary views. For instance, participant LC2 disagrees with the notion that companies would voluntarily disclose their CSR activities because of legitimacy considerations. According to this participant,

"Firms in Nigeria hardly disclose their corporate social responsibility practices. To some, disclosing what they do regarding CSR may expose them to endless demands by host communities…..I think that firms are merely taking advantage of the absence of guiding regulations not to disclose". The findings of this study is nested within a contextual model and an implementation framework discussed in sections 6 and 7.

DEVELOPMENT OF A CUSTOMIZED CSR MODEL FOR NIGERIA

Findings from this study support a mandatory CSR disclosure regulation. Therefore, a customized model for CSR disclosure is developed based on a "comply or explain" concept. While this section discussed the CSR model, the diagrammatical representation of the model is shown in Figure 1 under the appendices section below. In this model (see figure 1 below), the position of law enforcement equal international standards which companies try to comply

with for purposes of accreditation basically since there are no regulations for compliance with international CSR guidelines like the OECD etc. Furthermore, the level of ethical behaviour of firms in relation to national legislations e.g. those of human rights, labour, health, environment, etc. is low. This means moral decency, as articulated by the majority of the participants from each of the chosen categories, is lower than what the law stipulates. Since CSR is going beyond the legal obligations, it appears that CSR is inadequately practice i.e. lower than the level with national legislations as represented by law enforcement in the diagram. This is the focus of this study. How can this study help close or narrow the CSR disclosure gap both in theory and practice? How can government in Nigeria help promote CSR disclosure by firms? From the theoretical foundations of the study, whilst the legitimacy theory is used as a disclosure motivation salience, it is also true that the power of stakeholders (e.g. local communities) to exercise the social licence to operate (SLO) instrument is derived from the SHT as argued by Mitchell et al (1997). Furthermore, as MNCs operating in Nigeria interact with local communities, the need to demonstrate that they are behaving responsibly becomes even more imperative. Consequently, a mandatory disclosure regulation as shown at the second level of the model serves to stimulate MNCs to raise the level of their ethical behaviour since CSR disclosure information could be made public by CSOs and other stakeholders. Therefore, the distance between law enforcement and mandatory disclosure Law in the above diagram is intended to fill the gap in CSR disclosure in Nigeria. As shown in the diagram, the mandatory disclosure legislation makes it mandatory for companies operating in Nigeria to disclose their social and environmental activities. It is modelled after the Dutch "comply or explain" model (see Ogiri, 2013). While companies are free to voluntarily practice CSR, they are, however, required by law (in this case, mandatory disclosure law) to include in their annual reports, a report on their CSR activities for the period, otherwise explain why such reports have not been included. When companies do not report, they may be exposing themselves to public scrutiny. The basis for such reporting by companies operating in Nigeria is compliance with the OECD guidelines and/or the ISO 26000 which is a guidance document of which Nigeria is a signatory in its endorsement by several countries (Castka et al.2008). With polices and institutional framework to stimulate Firms ethical behaviour, CSR is sure to receive a boost in Nigeria.

RECOMMENDATIONS FOR IMPLEMENTATION OF CSR POLICY FRAME-WORK

While the diagrammatical representation of the framework is shown in Fig.2 below, this section outlined the various implementation stages involve in setting up a regulatory framework.

1. Government initiate CSR policy to stimulate firms to show specific sustainable behaviour.
2. Establish an Institutional framework, which may include establishing a CSR Initiative or Commission to educate and raise awareness through effective collaboration with Civil Society Organizations (CSOs).
3. Enacting legislation for mandatory disclosure of voluntary CSR practices by companies.
4. A transparency benchmark is developed to provide a basis for assessing, evaluating and measuring Firms' CSR activities.
5. Civil Society Organizations' and trade unions to participate in information sharing and partnering with local communities in CSR issues.
6. Regular stakeholder engagement with Multinational Corporations (MNCs) and Enterprises operating in Nigeria.
7. Encourage naming and shaming of companies regarding CSR compliance based on reporting benchmarks.

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8. Carry out campaigns, training and round table discussions on CSR.
9. Feedback is achieved through effective CSR communication mechanism.
10. In the present study, CSR equal Voluntary Practice + Mandatory disclosure.

SUMMARY AND CONCLUSION

The major objective of this study is the development of a mandatory CSR disclosure model for multinational Corporations operating in Nigeria. This objective had three specific goals which include: firstly, to provide government with useful policy tool for CSR policy making. Secondly, the study seeks to provide useful guidance for companies on how to strategically embed their CSR activities with government policy thereby meeting the needs and expectations of stakeholders, and finally, to expand our theoretical knowledge of CSR and public policy (see Ogiri, 2013). Our results show participants clear preference for mandatory CSR disclosure regulation aimed at stimulating companies to raise the level of their ethical conduct. Results from this study also highlights the desire to protect organizational legitimacy, lack of CSR awareness and the discretional nature of CSR practice by firms in Nigeria as some of the contextual factors limiting CSR disclosure. Finally, the study developed a framework for the implementation of CSR "comply or explain" model in a developing country context. Therefore, this study has implications for theory as well as public policy of government, and practice management. Future research may focus on the behaviour of Nigeria companies operating abroad. Furthermore, the effect of mandatory CSR disclosure on the finances of reporting companies can be examined; and how SMEs in Nigeria can effectively participate in the socio-economic and business sustainability drive through self-motivated CSR practice.

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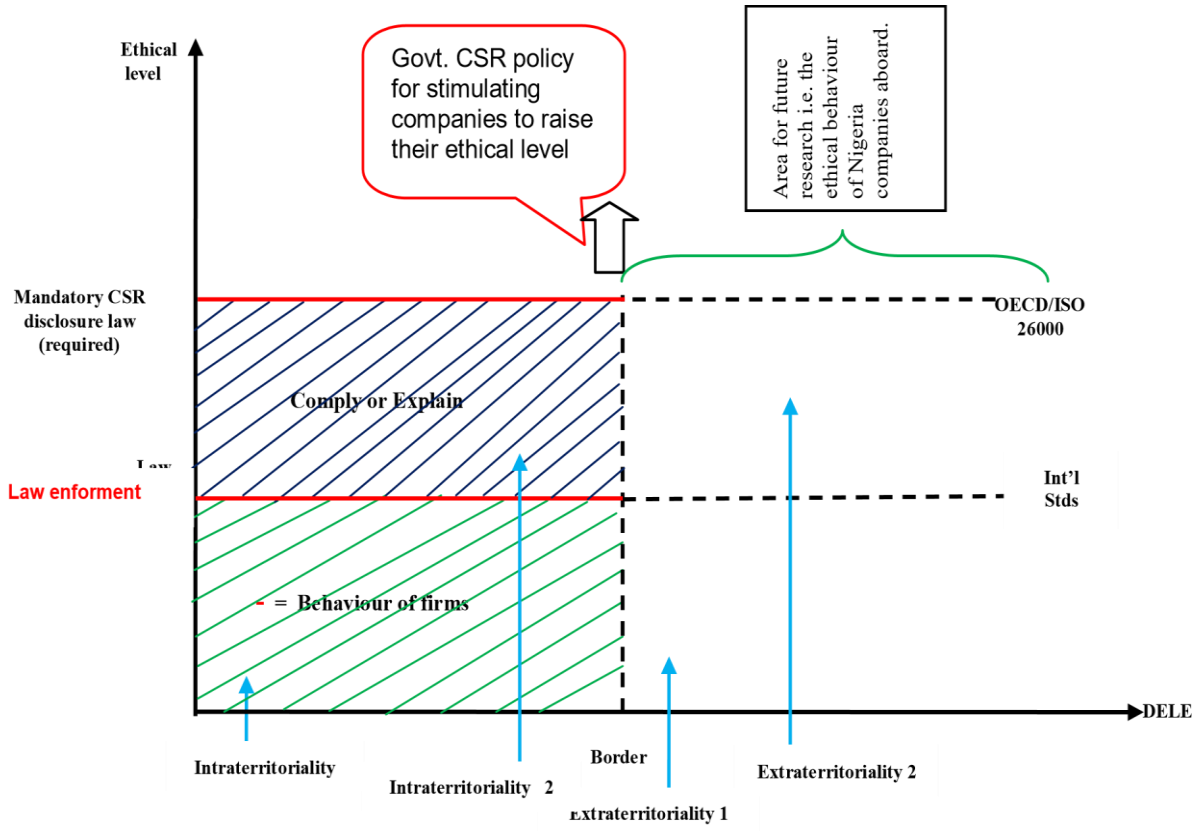
APPENDICES AND FIGURES:

Table 1. Key findings

Themes	Sub-Themes	Codes
Theme I: Preference for Mandatory CSR Disclosure	Increase level of ethical conduct of Firms	Transparency More commitment Environmental activities
	Increase and encourage CSR practice	
	(a) Stakeholder engagement	Eliminates disagreements Firm relationship
	(b) Healthy competition	Improve infrastructure Care for environment
	(c) Compel companies to disclose CSR	Firms should disclose Form of law Regulation Pass law make compulsory
Theme II: CSR is discretional	Voluntary practice and voluntary disclosure	Scanty and do not disclose much Philanthropic activities Haphazard reports Not capable of meeting needs Difficulty in monitoring Lacks importance Not a priority
Theme III: Lack of CSR awareness	Effect on Firm profitability	Unpopular CSR harm profitability Don't see any harm on profit

Theme IV: Organizational legitimacy	Motives behind CSR engagement	Confidence building Public perception Positive image Social licence Good conduct Responsible corporate citizen

Figure 1. A customized CSR model for mandatory disclosure regulation



Source: Adapted from Ogiri (2013)

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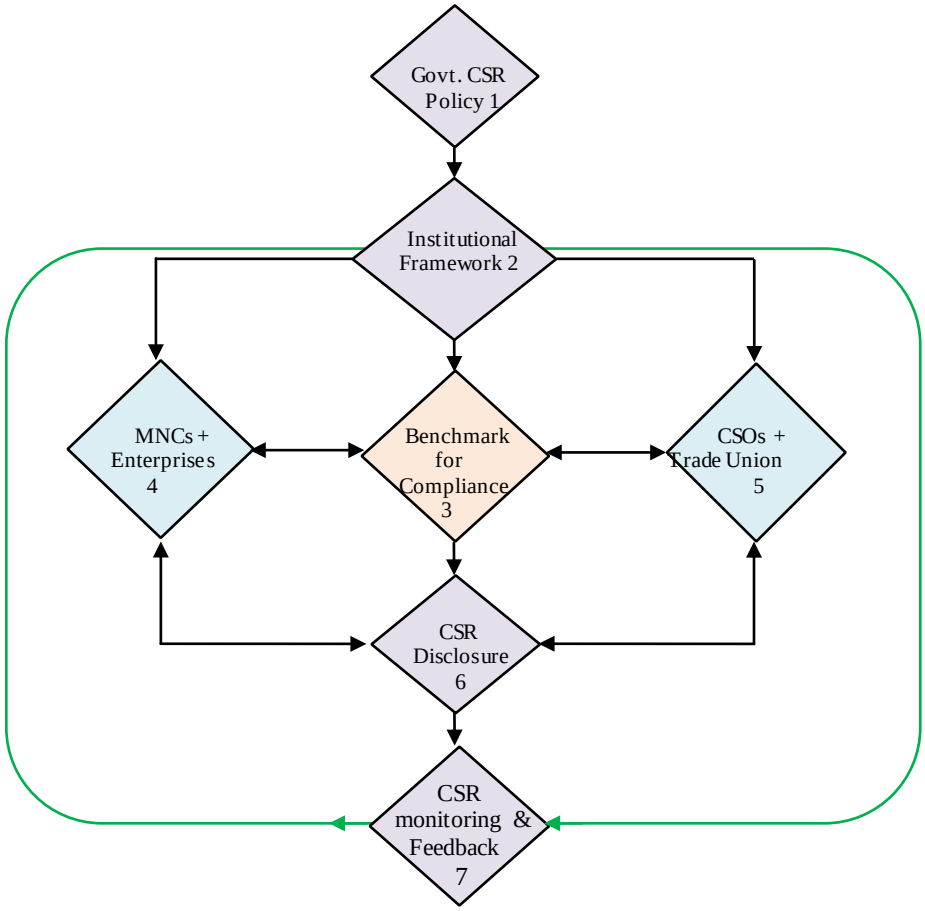
Figure 2. Implementation framework for CSR model.



Source: Adapted from Ogiri (2013)

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THE DNA DATABASES: BIOLOGICAL SURVEILLANCE AND CRIMINAL INVESTIGATION

AUGUSTO MEIREIS[1] AND MARISA ALMEIDA ARAÚJO[2]

ABSTRACT

The DNA databases are a growing reality worldwide and are recognisably indispensable tools for criminal investigation. Assuming themselves as essential in preventing crime and detecting menaces, such as terrorism and organised crime. DNA databases are, not only a modern method of fingerprinting but, also, a powerful technique of (*biological) surveillance*.

Considering the sensitive information that can be obtained from DNA profiles, ethical problems arise, mainly at the human rights level of personal integrity and privacy, with severe expression in criminal procedure.

This problem will be addressed considering Portuguese domestic legal system, *de lege data* and, *de lege ferenda,* the most needed legal harmonisation for international cooperation and mutual recognition.

Keywords: DNA databases, Data protection, Criminal investigation, Biological surveillance, Human rights.

INTRODUCTION

DNA profiles are, considering their technical sophistication, a powerful *weapon* in crime prevention (as well as for the purposes of civil identification). Although, the quantity and, particularly, the sensitive nature of the information collected from the biological samples raises severe ethical concern on a human rights level. Therefore, this information relating to DNA databases needs to be carefully handled so, when fulfilling objectives of criminal policy, they do not annihilate individual rights.

The asymmetry of domestic laws concerning DNA databases and the level of achievement are most different. Many countries are still to implement these databases. If United Kingdom has taken the leadership in the late nineties, other countries only regulated the creation of a national DNA database much later; for instance, Portugal regulated the creation of the national DNA database in 2008.

Besides that, the different approaches of each country in this matter, in a more or less expansionist position, surfaces another setback: the international legal harmonisation for the, most needed, international cooperation and mutual recognition.

Since the late nineties, European and International legislative documents urge the exchange of DNA analysis results, aiming the creation of a European database, as stated in the Council Resolution of 9th June 1997.[3] However, the discrepant positions related to this subject highlight, in particular at the level of international cooperation, the struggling to achieve (mutual) goals in fighting crime, especially terrorism.

The key is a balanced composition between the public and individual interests in conflict. How to achieve it?

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[3] The Council, with the Resolution of 30th November 2009, relating to the same matter, encourages all Member States to apply the new European Standard Set (ESS) of series of DNA markers presented in the document, by increasing the number of markers.

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This is the balance needed so we can legitimate any solution in this matter. If it's undeniable that the individual rights must be safeguarded, we must also assure the effectiveness defined by the criminal policy, especially in violent crime, as a national security imperative that all State Members have to assure.

Moreover, the Committee of Ministers of the Council of Europe in the Recommendation R (92) 1 of 10th February 1992 emphasises fight against terrorism as a main concern, that has to be assumed by the States accordingly.

We would like to contribute to this debate analysing the Portuguese legal system, which is assumed to be restrictive (Santos, Machado, and Silva, 2013) and some international legal texts, to which many States are already linked to, being guided, mainly, by the European Court of Human Rights (ECHR) jurisprudence.

THE PORTUGUESE LAW

General principles

The Portuguese Law no. 5/2008, of 12th February[4] establishes the creation of the first DNA profiles database for, only, civil identification and criminal investigation purposes.[5] Compiling, processing and the preservation of human cells' samples and the methods of analysis, comparison of profiles extracted from the samples, as well as processing the information are determined in the Law (Article 1, no 1).

This DNA database has samples collected from national citizens, foreigners or stateless people, and all residents in Portugal. The data holders can contribute voluntarily (mainly for civil identification purposes) or coercively (in a criminal investigation context) (Article 6, no 1).

The DNA profiles and personal data collected must be handled in agreement with the structural principles in the Portuguese legislation. In a broad sense, the protection of personal data,[6] the principles of transparency and strict respect for the protection of private life and self-determination (Article 9), as well as other constitutional rights (Article 3, no 2). The strict obedience for the principles of legality, authenticity, veracity, clarity and security (Article 3, no 3) are also assured.

Contents of the DNA database

Obtaining DNA profiles can result from samples collected from volunteers, children or incapable, as well as involuntarily.

Regarding the compilation of DNA samples in volunteers, for the purposes of civil identification (Article 6), it must be requested from data holder, in writing, to the competent authorities (Article 6, no 2). All volunteers must give their free, informed and written consent, (Article 6, no 1), and may even refuse the intersection of their profile details for criminal investigation purposes (Article 6, no 4). Having the sample and DNA profile obtained, the information is inserted in the file provided in point *a*) no 1 of Article 15.

The samples of children and incapable (Article 6, no 3) are treated at the volunteers' regime. Although, in this case, the application should be made by their legal representative

[4] Amended by Law no. 90/2017, of 22nd of August.
[5] And, in a very particular way, to scientific research and statistics, and after an irreversible anonymisation (Article 23).
[6] The legislation that regulates the protection of personal data contained in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th of April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data which was revoked by Directive 95/46/EC (General Regulation on data protection).

upon prior authorisation from the *District Attorney*,[7] and can only be used for civil identification purposes. It applies the rule of free, informed and written consent (Article 6, no 1) of the representative.

It is also possible to gather samples against the will of the data holder but, in these cases, only for criminal investigation purposes, and only from defendants (Article 8, no 1) or convicted (Article 8, no 2) in criminal proceedings.

The law has distinct files for defendants and convicted (and for volunteers). As stated by Corte-Real (2015), and despite a less exuberant position of the Portuguese legislation, the existence of a file for defendants is useful to criminal investigation, but with different treatment of those convicted, is safeguarded and guaranteed the rights of those citizens in a positive discrimination.

In addition, (Article 8, no 1), to the coercive gatherings held by judge's order, also predicts the collection of samples in defendants under their specified request or consent.

Furthermore, it is also argued, with great acuity by Jorge dos Reis Bravo (2015), the possibility of *genetic profiling in bonam partem*. But, the possibility of a suspects' profile to exclude any investigation or suspicion has no legal provision. Even if we can consider it a pertinent solution *de lege ferenda* is, for now, prohibited.

Regarding the gathering of samples of those convicted, referred in Article 8, no 2, the consent of the person is absolutely irrelevant.

The structure of the DNA profiles database

The Portuguese DNA database[8] (Article 2, point *i*)) is prepared to fulfil various uses. The files have diverse compositions obtained from different DNA markers (the list of files is contained in no 1 of Article 15).

Portuguese Ordinance No. 270/2009, of 17th March, determined the DNA markers to be used and are to integrate the profile database regulated by Law no. 5/2008. It was considered the Council Resolution of 25th June 2001 - 2001/C 187/01, but also the markers used by INTERPOL and the international scientific community. The prime scope is to achieve mutual recognition in DNA analyses results.

In agreement with that law, the analysis of samples is restricted only to those DNA markers, which are strictly necessary for the holder's identification for civil and criminal investigation purposes exclusively (Article 12).

However, with the Resolution of the Council of 30th November 2009 - 2009/C 296/01, concerning the exchange of DNA analysis results, which came to add new markers to the current European Standard Set (ESS), as well as the development of new multiplex systems, already validated by the international scientific community, which already included the new markers. It was necessary to update the list of DNA markers to integrate the DNA profiles database, something that Portugal has done through Decree no. 161/2018, of 6th of June.

Therefore, it is intended to avoid the loss of information and improve the number of DNA profiles in databases of European profiles, decreasing the existence of false coincidences.

Files of DNA profiles

Article 15 determines the existence of a set of files that contain information concerning the "reference samples" (Article 2, point *d*)) and "unknown samples" (Article 2, point *c*)):

- A file containing information relating to samples from volunteers, children and incapable;

[7] In Portugal, we have *Ministério Público*, that has some resemblance with the District Attorney, but the nature and competences are not, exactly, the same.
[8] Essentially the files of non-codifying DNA profiles.

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- A file containing the information on the "unknown samples", collected according to no 1 of Article 7;
- A file containing the information on the "reference sample" of missing persons (no 1 of Article 7) or "[reference] samples" of their relatives (no 2 of Article 7);
- A file containing the information on the "unknown samples" for criminal investigation purposes (no 5 of Article 8);
- A file containing information on the samples of convicted in criminal proceedings by a final court decision (no 2 and 3 of Article 8);
- A file containing information on the samples of professionals who analyse samples;
- A file to store temporarily the information on profiles of defendants in criminal proceedings, where a penalty of imprisonment must be equal or superior to three years, which may not be considered for the purposes of interconnection outside the cases provided in Article 19.º -A.

According to Article 15, no 2, the system must ensure that the DNA profiles and personal data are stored in separate files, logically and physically, handled by different people, with restrict access, coded and identified. It is prohibited (article 15 no 3) the inclusion of any identifying element of the data's holder in the DNA profile, as well as any type of research.

Interconnection of profiles

As stated in article 1, no 3 is forbidden the use, analysis and treatment of any type of information obtained from the samples for purposes other than those provided in Article 4: civil identification and criminal investigation.

Interconnection for civil identification purposes

It is determined in article 4, no 2 that, for the purposes of civil identification, may be carried out:

With resource to the profiles contained in the DNA database, through the comparison of DNA profiles related with samples of biological material collected from an identified (Article 7, no 2) or unidentified person (Article 7, no 1), or from a cadaver, or part of the cadaver or in a place where the collections are made, or

With resource to the profiles contained in **the DNA** database, through the comparison of those profiles (Article 7, no 1 and 2) with existing data on the DNA profiles database, with some limitations under the Articles 19 and 19-A. Consequently, by Article 19, no 2, the "reference samples" provided in no 1 and 2 of Article 7, under Article 15, no 1, acknowledge the interconnection of "unknown samples" of Article 7 no 1, with the "reference sample" of missing persons, obtained pursuant to nr 1 of Article 7, with "reference samples" of professionals who gather and analyse the samples.

In this sense, and now in accordance with no 3 of Article 19, the "problem samples" of Article 7 no 1 can be crossed with the existing profiles in the file referred in point *c*) of no 1 of Article 15, concerning the "reference sample" of missing persons, obtained pursuant to no 1 of Article 7, or samples of their relatives, obtained pursuant to no 2 of Article 7; Point *d*) of no 1 of Article 15, concerning the "unknown samples" for criminal investigation; Point *e*) of no 1 of Article 15, concerning the "reference sample" of persons convicted in criminal proceedings; Point *f*) of no 1 of Article 15 concerning professionals samples who gather and analyse the biological material.

Interconnection in the scope of the Criminal Investigation

Regarding the criminal investigation, and according to Article 19, no 6, it is possible to interconnect "unknown samples" collected under the Article 8, no 5, for criminal investigation

purposes and the "unknown samples" collected in convicted persons from criminal proceedings, under the Article 8, no 2 and 3, for criminal investigation purposes, with:

- The file containing the information on the samples of volunteers, obtained in accordance with no 1 and 3 of Article 6 (Article 15, no 1, point *a*));
- The file containing the information on the "unknown samples", samples collected under no 1 of Article 7 (Article 15, no 1, point *b*));
- A file concerning the "unknown samples" for criminal investigation (Article 15, no 1, point *d*));
- A file concerning the "reference sample" of convicted persons in criminal proceedings, for final decision (Article 15, no 1, point *e*));
- A file concerning the professionals [reference samples] who gather and analyse samples (Article 15, no 1, point *f*)).

However, for criminal investigation purposes, as mentioned in point *b*), no 4 of Article 19, it is still possible to interconnect the files referred in points *a*) - samples of volunteers; *b*) – "unknown samples" of Article 7, no 1; *c*) – "reference samples" in Article 7, no 1 and 2; and *f*) – samples of professionals, Article 15.

Interconnection of DNA profiles related to samples collected in adult volunteers

The samples collected from adult volunteers under Article 6, no 1, may be subject to interconnection for identification purposes.

For criminal investigation purposes the interconnection is possible, under the Article 19, no 4, point *a*) for all cases of Article 15, no 1, when their holders have not denied authorisation for the interconnection (Article 6, no 4).

Interconnection involving DNA profiles from children or incapable

In case of the possibility to interconnect reference samples collected in children or incapable, only applies for civil identification purposes, *mutatis mutandis*, shall be the arrangements provided for the interconnection of samples of adult volunteers (Article 6, no 3).

Interconnection in pending criminal proceedings

If a criminal proceeding is pending and if interconnect files is necessary for criminal investigation purposes, samples collected in previous proceedings must be separated from ongoing ones.

Nevertheless, the interconnection can be done with the file containing the information on the "unknown samples", collected under no 1 of Article 7 (Article 15, no 1, point *b*); with file on the "unknown samples" for criminal investigation (Article 15, no 1, point *d*); with file relating to professionals who gather and analyse samples (Article 15, no 1, point *f*)).

THE ECHR JURISPRUDENCE

Regarding DNA databases, that has been the target of lit discussion concerning the subject of our work; we shall examine the decision of the European Court of Human Rights (ECHR) in a case against the United Kingdom.

The case S. and Marper v. the United Kingdom (Application No 30562/04, 30566/04) was judged in Strasbourg on the 4th December 2008 (S. and Marper v. The United Kingdom, 2008).

The vital question in the case was the legality of the maintenance *ad eternum* of DNA profiles. In the UK the complainants were dismissed of all charges in the criminal procedure.

The Grand Chamber of the ECHR, in this particular case, considered that the domestic decision had violated Article 8 of the European Convention (the right to respect for private and family life).

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Even though the domestic decision was not unanimous, mainly considering the position of Baroness Hale of Richmond. The Baroness, as stated,

> *[…] disagreed with the majority considering that the retention of both fingerprint and DNA data constituted an interference by the State in a person's right to respect for his private life and thus required justification under the Convention*. (*S. and Marper v. The United Kingdom*, 2008, p. 6).

The Court stated that even if the complainants were accused of a crime, truth is that, at the end, all charges were dismissed in both cases. The maintenance of their DNA profiles, *ad eternum*, violated Article 8. The Strasbourg Court emphasises that is not so much the actual violation of Art. 8 but also the proneness of the violation.

In addition, the stigmatising effect and the violation of the principle of presumption of innocence, with no positive discrimination, caused the same treatment as convicted criminals, although the complainants have been cleared.

It was also emphasised the concern of collecting information from DNA profiles and the interconnection, not only from targeted people, but also from their genetic family. Inspired by the position taken by Baroness Hale of Richmond, in the domestic decision *sub judice*, the Court focus on the future use of the biological material, as well as the content of information, highly sensitive, of the data holder and those to whom he maintains a genetic link, in an intrinsic inseparability.

Concluding that, in the required balance between the maintenance of DNA profiles, to achieve a security exercise and crime prevention, and the individual right of respect of the complainants' private life, the maintenance of profiles does not seem necessary in a democratic society which, *in casu*, demonstrates the violation of art 8 of the Convention.

A reflection already made by the Nuffield Council in the 2007 report (Nuffield Council on Bioethics, 2007).

Emphasising the issue of the importance and public interest in the existence of forensic databases but always promoting the balance with the individual interests, including family members, and the principle of equal treatment, The Nuffield Council on Bioethics recommended:

> *Fingerprints, DNA profiles and subject biological samples should be retained indefinitely only for those convicted of a recordable offence. At present, the retention of profiles and samples can be justified as proportionate only for those who have been convicted. In all other cases, samples should be destroyed, and the resulting profiles deleted from the NDNAD* (Nuffield Council on Bioethics, 2007, p. xv § 11.

In 2010, and following the decision of the ECHR, the Nuffield Council on Bioethics has issued an *update* on the 2007 report. Considering the legislative amendments that the decision, in the wake of the report, gave cause, including the treatment of samples and data of non-convicted, volunteers and children (under the age of 10) and the destruction of biological material.

In fact, already with the Recommendation R (92) 1 of the Committee of Ministers of the Council of Europe from 10th February 1992, the use of DNA, particularly in criminal justice resulted from the *explanatory memorandum*. Related to data protection, the Committee stated that the collection of this information should be limited to the necessary. Preventing and fighting crime should be related to a real danger or, also as stated, the suppression of the criminal offense.

Excluding, according to the same memorandum, any form of open-ended collection of data correlating it to a real danger, which shall not fall into mere speculation, but instead, and yet not limited in the specific offense, on a reasonable suspicion of a committed, or to be committed, crime.

The same recommendation assumes that the information should be destroyed when no longer needed and, as stated that it should be deleted once the suspect has been cleared or, in case the case of security of the state, even though the individual has not bee charged but, "in such cases strict storage periods should be defined by domestic law" (Recommendation R (92) 1 of the Committee of Ministers of the Council of Europe, p. 3).

The Strasbourg Court outlines a limit on the use of data collected from genetic material. The legitimacy to the interference with individual rights must be proportionate and reasonable with the ends to be achieved.

THE INVESTIGATION DEMANDS

The development of DNA databases around the world, national security and the needed international cooperation regarding the combat against terrorism and organised crime, are the main arguments to balance and weighting the conflicting interest to develop a legitimate solution.

It seems undeniable that the increase of DNA profiles in databases, in criminal matters, expands the range of options when searching for suspects of a crime or *mere* threat (Wallace et al., 2014).

However, it is to be demonstrated that the increase of this network has risen, proportionally, the results in that search (Wallace, 2012) and the risk of false matches can lead to errors and misleading investigation paths.

In the United States, a report of 2009 showed a severe concern for the urgent need to, in the majority of forensic science, raise standards relating to the results of the forensic investigation (National Research Council, 2009).

Already in 2016, with the report to President Obama, experts analysed hundreds of criminal cases in which the DNA was crucial, including the reopening of cases. But, report's analysis, by independent reviews, revealed:

> *[…] that many relied in part on faulty expert testimony from forensic scientists who had told juries that similar features in a pair of samples taken from the suspect and from the crime scene (e.g., hair, bullets, bitemarks, take or shoe treads, or other items) defendants implicated in a crime with a high degree of certainty. According to the reviews, these errors were not simply a matter of individual examiners testifying to conclusions that turned out to be incorrect; rather, they reflected a systemic problem - the testimony was based on methods and included claims of accuracy that were cloaked in purported to scientific respectability but actually had never been subjected to meaningful scientific scrutiny*. (USA, President's Council of Advisors on Science and Technology, 2016, p. 26)

This result is alarming considering the high degree of *faith* that the judges put in experts and, their reports makes them, in fact, the true *judges* of the defendant.

In Portugal, the concern about possible errors was given great emphasis. Besides the ESS is not within the police competence to collect and storage the samples, and laboratory procedures are given to experts (Machado and Silva, 2008).

Besides all the criticism, research, particularly criminal, will improve the creation and growth of DNA databases, that will be continuously expanding considering the goals of preventing and fighting crime and, this is, unquestionably, the major expansionary argument.

The cross-border crime arises the problem at an international level as a matter of national security. In a particular historical context, as the present one, expansionist movements of these databases are considered for security reasons and cooperation obligations. Those, among other reasons, can determine, in domestic laws, expansionist movements to assure that the international obligations are fulfilled.

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The issue must be, for that, treated accordingly, in an international level and principles of equality of arms and fairness and what must be considered a *real danger* are the main questions to be determined, to accomplish and balance all interests in conflict and in strict respect of the Human Rights.

The Prüm Convention,[9] which Portugal has subscribed, deepening the cooperation between the Members provides, in its Article 8, the network of electronic exchanges of, among other things, DNA data in the fight against terrorism, organised crime and illegal migration, which, by a majority of reasons, is the motto for an effort of harmonisation of domestic laws of the State Members.

The inequalities in laws are noted in the Prüm system, as referred by Santos and Machado (201 7), with the Decision 2008/615/JHA of the Council of the European Union, in the field of criminality and Decision 2008/616/JHA of 23rd June 2008 for the implementation of the former, cooperation is encouraged, allowing automated comparison of DNA profiles.

CONCLUSIONS

The new biotechnologies and the decode of the human DNA revealed as, in the words of Foucault (1988 (1976)), a form of *biopower*, which we cannot exclude.

A debate to all citizens, who are under the auspices of that same *biopower*, should be promoted. As Machado refers, the democratic legitimacy is the key to the success of genetic databases (Machado, 2011), being essential to promote a *biodebate*.

Overall, everyone has the right to live a life without legal restrictions, particularly without the genetic identification imposition.

But the real matter is, in a new perspective of citizenship, what can be assumed as a right to individual autonomy, when deciding in the non-participation, may be in conflict with the autonomy of others.

This subject is not new, by simply thinking, even in more restrictive laws, in the database of the ones convicted in criminal proceedings, despite being against their will, a file remains for future interconnection.

Although in a different context, all situations caused from a real threat, and even without any criminal proceedings, the DNA profiles can be considered for *biological surveillance*, as well as for *family examining*. In this particular matter the UK's Counter-terrorism and Anti-money laundering policy, mainly, in this subject, the Counter-Terrorism and Security Act, has taken the lead once again.

Nevertheless, if the new biological values, particularly at a criminal investigation level, are important allies of the States when fighting and preventing crime it also arises, in greater strength, ethical and legal problems, that will be necessary to consider to an optimisation of the principles and interests at conflict, and the solution established to be proportionate and legitimate.

This conflict and the interests in confrontation impose a public debate. The mistrust should disappear once there is a demonstration of the balance that is imposed by the individual rights in this dispute.

The trustworthiness and the public perception of the importance of the DNA databases, particularly in fighting crime and preventing menaces, leads to an increase in confidence and to the democratic legitimacy to develop the DNA databases and their use.

This valid perception of legitimacy imposes a global debate, bringing out the theme to the public domain in an outcrop of democratic participation and an exercise of (*bio)citizenship* (Machado and Silva, 2008).

[9] Concluded in May 2005 on the steppingup of cross-border cooperation, particularly in fighting terrorism and cross-border crime.

The existence of DNA databases will be much more accepted if we can guarantee the greater clarification about its existence and purpose. This also would guarantee more volunteers, to the achievement of new projections of social responsibility.

This *biovalue* emphasises an important group of samples, the ones from volunteers, to which the Portuguese legislation has demonstrated concern for the inclusion of a civic participation in the creation of the databases.

The *biological citizenship* that Rose and Novas refer to, despite not centred in the criminal investigation matter, but which we can include, focus on the active participation of citizens, individually and as a whole in a social perspective. A democratic participation in a new biological dimension and, consequently, a new form of citizenship, bringing out the theme of their own *genetic responsibility* (Rose and Novas, 2003).

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THE LEGAL FRAMEWORK FOR THE DETERMINATION OF THE STATE BORDER INTERNATIONAL ASPECT

ARTŪRS GAVEIKA[1]

ABSTRACT

The territory of the country is inviolable according to customs established in international laws and has been confirmed written in the Charters of the United Nations, Helsinki Conference on Security and Cooperation in Europe in 1975 the Final Act of Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, stating that Member States will respect the territorial integrity of each Member State and refrain from any actions incompatible with the principles and objectives of the Charter of the United Nations against the territorial integrity, political independence or unity of any Member State, incl. from any activities that would force you to use force or threaten to use force. In 2004, Latvia joined the European Union and in 2007 it joined the Schengen Convention, thus becoming a country with the EU's external borders. The state border with the Russian Federation, the Republic of Belarus, the maritime border, including ports and airports, is regarded as the EU's external border in Latvia in accordance with the Schengen Convention. In strengthening these borders, also in the legal regulation context Latvia is responsible not only at the national level, but also for all the Member States of the EU and the Schengen Convention. The article is devoted to the legal regulation of the state border in the international aspect on the determination of the border and border dispute between Latvia and Russia.

Keywords: Principles of international law, Territorial inviolability, State border regime, Countries, Border agreements.

INTRODUCTION

The borders of countries' territories and their regime are usually determined by national laws and international treaties of which peace agreements must first be mentioned (Bojārs, 2004).

An example of this is the Brest-Litovsk Peace Treaty, in which there was no place for the people's self-determination. This treaty tore the land and people of Latvia into three pieces that were destined for destruction. But there were also some exceptions in this case, such as Germany, whose borders are drawn to the principles of most of the peoples' self-determination, since the German people's national consciousness is so strong that it cannot be imposed on the will of others (Seskis, 1991), although Germany also had to cope with the winner's will in some other historical periods.

The author has used historical, comparative and legal analysis methods in this article. The article is based on the Postdoc Latvia Research project "The EU's external border security, Latvian internal security". No.1.1.1.2./VIAA/1/16/127. (2017 -2020).

THE TERRITORY OF A COUNTRY IN INTERNATIONAL ASPECT

Bojārs (2004) points out that according to Fon Glenn there are seven main ways of acquiring the territory: discovery the territory, occupation, expansion by growing, voluntary cession, peace agreements, forced cession or seizure by force. We can agree with this statement except for peace agreements, which are in fact the legal acts of borders determination and hence this may be the result of a legally established form of acquisition of any of the aforementioned territories. Summing up the views of several different lawyers of different ages, one can

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conclude that the definition of territories, and hence the definition of national borders, takes place through the interdependence of peoples' self-determination rights and external international relations, rights and processes.

The brightest manifestation of such interaction is the international legal dispute, which would also fully apply to Latvia in the case of the Border Treaty (Paparinska, 2009). Territories can be divided into two main categories: areas subject to the jurisdiction of a country and territories not subject to the jurisdiction of any country. The latter owns a common territory to which no State has the right to extend its jurisdiction and which cannot be seized, such as the high seas and space, and a territory not yet subject to its jurisdiction by any state, such as still undiscovered islands and even territories without its own although they are human beings in the UN Member States (Bojārs, 2004) that are responsible or take responsibility for the management of territories whose peoples have not yet reached full self-government, recognises the principle that the interests of those living in these areas are primary and, as a sacred duty, commit themselves to maximise the promotion of these territories the well-being of citizens within the framework of the International Peace and Security System established by these Statutes and for this purpose.

In these territories, relations between States are governed by the rules and principles of international law where the UN Declaration on Principles of International Law must be taken into account in the field of national borders:

> *Each State must refrain from threats to use force or its use for the purpose of violating the international borders existing in another country or as an international dispute, as well as territorial disputes and state border issues, the means of resolution. Each country must equally refrain from threatening to use force or for violating international demarcation lines, such as conciliation lines that are identified or comply with international agreements to which one party is a party or to be followed by another country*. (Griģeļonis, 2000)

The territory is one of the hallmarks of an independent sovereign state, to which national jurisdiction extends. The boundaries of the national territory are usually determined by mutual agreement between neighbouring countries and other interested countries, thus concluding an international agreement in accordance with the 1969 Vienna Convention on the Law of Treaties (Griģeļonis, 2000). The competence and procedures for the conclusion of international agreements in Latvia are governed by the 1994 Law on International Treaties of the Republic of Latvia (Republic of Latvia, 1994), the purpose of which is to determine the conclusion, performance, denunciation and other issues related to international agreements of the Republic of Latvia, including the conclusion of the border agreements as separate type of agreements of the Republic of Latvia.

There is a territorial implication of international law, assuming that the state border is surrounded by national territories and is subject to the laws of the state that are binding on the inhabitants of the territory of the country. The general principles of international law concerning the border regime are set out in Section III Inviolability of frontiers of the Helsinki Final Act in 1975 (OSCE, 1975). It says: "*The participating States regard as inviolable all one another's frontiers as well as the frontiers of all States in Europe and therefore they will refrain now and in the future from assaulting these frontiers. Accordingly, they will also refrain from any demand for, or act of, seizure and usurpation of part or all of the territory of any participating State"* (OSCE, 1975). The final act of the Helsinki Final Act does not mention the rights of peoples to self-determination, but their essence is open to the people's right to freely choose and develop their political, social, economic and cultural systems, as well as the right to determine their laws, administrative rules, practices and policies in the 1989 Vienna Final Document (Bojārs, 2004).

The principle of frontier inviolability, as enshrined in the Helsinki Final Act (OSCE, 1975), recognises the limits of the status quo as immutable. However, it is also agreed unanimously that the limits established in violation of international law are not protected by the principle of inviolability of borders. In the referring court judgment, the Cabinet of Ministers emphasises in particular that, referring to the principle of inviolability of borders, it did not agree with the Russian Federation's understanding of the content of this principle. Referring to the Helsinki Final Act, also referring to the declarations of the West, expressed after the adoption of the Helsinki Final Act, and underlined the right of the Baltic States to renew their statehood. In the judgment of the Constitutional Court on the border treaty with the Russian Federation, it is indicated that Article 3 of the Satversme was adopted in order to prevent (impede) the possible separation of Latgale from Latvia. Article 3 of the Satversme does not include a constitutional ban on amending Latvia's state borders, as it is not possible, in accordance with international law, to ensure the inviolability of borders. Similarly, the borders of Latvia were changed after the entry into force of the Satversme both during the interwar period and after the restoration of independence (Republic of Latvia, 2007). In its reply to the Constitutional Court, the Cabinet of Ministers refers to the referendum to the Final Act of Helsinki as referring to the declarations of the West, which was expressed after the adoption of the Helsinki Final Act, and emphasised the right of the Baltic States to renew their statehood and agree on borders with neighbouring countries. As George Ford said in his speech in Helsinki in 1975 On August 1, the principles enshrined in the Helsinki Final Act of the OSCE confirm the basic principles of inter-state relations, including the possibility of amending borders for peaceful means. No boundless invincibility can be established forever, sovereign states have the right to conclude any international agreement, including the territory and borders (Republic of Latvia, Cabinet of Ministers, 2007).

In it's reply, the Cabinet of Ministers concluded that, because of the facts set out, the Abrenes as an ethnographic land belonging to the Latvian state are not historically justified. However, according to the author's point of view, this conclusion does not follow from the interpretation of the ethnographic principle of the rather controversial analysis of the area analysed in the replies, because at the same time the Abrene's historical affiliation with the Latvians is pointed out, as opposed to some economic and military strategic interests for a very limited period of time, which in reality should not be regarded as legitimate counterarguments from the internationally accepted principles of determining territories hence borders as well.

It can also be justified by Fogel's (2009) statement that the term "national territory" is closely linked to the concept of "national territory" (Fogels, 2009).

As for the nations of one nation, these concepts coincide, as the territory of the country is simultaneously the territory of the nation living there. With similar and even more radical views, the deputy of the Citizens' Congress of the Republic of Latvia Edgars Alksnis (2007) said:

> *Despite the continued annexation of the Abrene district by the Russian Federation, the borders of Latvia are not to be changed, the closure of new border agreements by renouncing part of the territory of Latvia is in conflict with the legal succession of Latvia and the interests of its Citizen's Union. Decisions made by the actual administrative institutions and officials acting in the territory of the Republic of Latvia to waive the right to a part of the territory of the Republic of Latvia are in conflict with Articles 3 and 77 of the Satversme and invalid and not legally effective. The waiver of the territory of the Republic of Latvia in favour of the occupying country is a criminal offense, both in accordance with the Penal Law of the Republic of Latvia and the Criminal Law currently in force in the Republic of Latvia.* (Republic of Latvia, 2007)

Unfortunately we have to recognize that the Abrene question has not been analysed and used in the experience of international territorial disputes and the possibilities of the UN

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International Court of Justice, although international territorial and border disputes are occur quite frequently also nowadays (UN International Court of Justice, 2002).

DETERMINING NATIONAL BORDERS

The following principles are important in determining the borders of a state: the state border is determined on the basis of two or more mutual agreements on the determination of the border (for example, border crossing points). In this case, the author also agrees with the conclusions of Ziemele that amendments in the articles of the border agreements are permissible from the point of view of international law, bearing in mind the risks associated with the diametrically opposite views of the parties on the legal basis governing such amendment, but such changes in the constitutional law should be handed over to the people for voting (Ziemele, 2008).

According to the Law on the State Border of Latvia (2009), the maintenance of the state border is not included in the conditions of the state border regime, but is rather generally defined by a separate law on the one hand as a condition of the regime, but on the other hand, as the procedure for the implementation of this condition is not fully specified.

In addition, in defining the State border, such crucial terms as delimitation, demarcation, re-demarcation, rectification are not defined in the list of terms in Section 1 of the State Border Law, but are used to determine the competence of state administration authorities in delimiting the state border, demarcation and other related activities, periodically mixing these terms with terms or words not accepted in international law, such as "measuring", "fixing", "marking", "restoration".

The inter-state treaties establishing determination of the borders will determine the common procedure for the examination and maintenance of borders and border zones, they can be interpreted in a narrower sense and should not be regarded as the subject of a State border regime defined by the Law" (State Border Guard, 2010).

The determination of the border of Latvia is defined in Law on the State Border of the Republic of Latvia article 3 as follows.

Unfortunately these provisions are not fully systematised, some separate procedures of border determination have been formulates, however the main principles on determining the state border which Latvia as an international body should assume have not been included. The definition of these principles should be based, as a matter of principle, on the universal principles of international law as defined by the UN and other international laws, since almost all countries nowadays are members of the UN (Fogels, 2009).

According to the author's point of view, the following principles should be observed in determining the state border:

- ensuring national security and international security of the Republic of Latvia;
- mutual respect and dignity for national sovereignty, territorial integrity and inviolability of the borders;
- multilateral and mutually beneficial cooperation between sovereign countries;
- peaceful settlement of national border disputes;
- national equality and non-interference in national affairs.

In international practice, the determination of the state border takes place in several stages. The first stage is the delimitation of the state border (from the Latin "delimitation" - identification, installation), which must understand the international agreement on the borders between two or more countries and their placement on a geographic map - in the annex of the border agreement (Kalniņa and Čerņevska, 1982).

The final delimitation document is an agreement on the state border (border agreement), a description of the state border and a map. A map with a marked national border line is an

integral part of the agreement on delimitation of the state border (Zalessky and Sobolevvsky, 2003).

The agreement on delimitation of the national border must be ratified in either or several Contracting States (Sukharev and Krutskikh, 2004). Unfortunately, the Law on the State Border does not define this concept at all, but in Article 3 of the Law the definition and renewal of the state border, which in essence is a matter of delimitation, is defined as the competence of the demarcation commission.

After delimitation the demarcation is usually carried out (from the French "demarcation" - separation), the national boundary in nature (Kalniņa and Čerņevska, 1982).

In its turn in the foreign scientific literature on demarcation this process is considered to be the determination and marking of the state border line in the area with borderlines in accordance with the agreements on the delimitation of the state border and the maps and annexes of the borderline descriptions. The demarcation is carried out by a specially created mixed commission (Sukharev and Krutskikh, 2004,). The author acknowledges the term defined in Belarusian scientific literature on the most successful formulation of the demarcation term (Zalessky and Sobolevvsky, 2003,). Summarising the above, the exact demarcation of the state boundary in nature should be considered on the basis of the delimitation agreements and topographical maps of the annexes with a national border line designation and textual description of the state boundary line in the nature, as well as the marking of the state border in the nature with borderline signs.

The concept of demarcation is closely linked to the concept of a demarcation line, the legal content of which is, in fact, minimal, as the demarcation line is understood as a line in the contested territory of two or more countries until the conclusion of a border treaty as a permanent state border. Such a term could also have been used in the practice of Latvia and neighbouring countries, for example, with regard to the Latvian-Russian border, although no bilateral intergovernmental agreement with the Russian Federation since the regaining of Latvia's independence has been used. Several agreements that were concluded between Latvia and Russia by 2007 have been used alternately for the term "borderline" or "borderline" (Pogrebņaks, 2004). Only in the national regulatory framework Latvia unilaterally used the term of the demarcation line in the 1994 Law on the State Border of the Republic of Latvia, although in the practice of international relations this term is widely used, including at a time when Latvia concluded a peace agreement with Russia on 1 February 1920 (Feldmanis, 2000). From the point of view of the author, this concept is not given proper attention in Latvian law, although in the practice of international law this concept is used very often in terms of territorial disputes, peace-keeping and the prevention of military conflicts (Farlex, 2018).

With the ratification of an international treaty and the approval of demarcation documents, the process of determining and marking the state border is completed. At the state border detection and marking stages, processes such as the rectification and redemption of the state border, which may take place after a time when the demarcation of the state border has already taken place, are also included. Bojārs (2004) defines re-demarcation as the restoration of the state border in the nature in accordance with existing agreements, restoration of damaged border marks, development of a new border description and protocols. This definition in the second part relating to the development of a new boundary description is inaccurate, as the description basically remains unchanged, but with the protocol, if necessary, some of the changes in the description are documented due to the restoration of border markers, that is re-demarcation. According to definition of Bojārs (2004) re-demarcation is the maintenance of a boundary line by restoring or repairing damaged boundary marks over time, replacing border marks with other types of borderlines, installing additional signs, checking and, in individual cases, specifying the demarcated line.

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Also, this definition in the phrase "keeping the border line in the order" is imprecise, since the borderline is primarily a geometric concept and is more correct with respect to topographical maps; secondly, in the nature, the border line in most cases is not visually visible at all, but sometimes it is noted with ditches and borderlines, for example, the state border line with the Republic of Estonia and the Republic of Lithuania, the polygonometric (centre) columns (Republic of Latvia 2013) with the Russian Federation and the Republic of Belarus or other border signs and warning signs (informational signs).

On the other hand, word ordering is apparently aimed at the state border zone (Republic of Latvia, Cabinet of the Ministers, 2010), maintaining (Republic of Latvia, 2009) which means clearing of the state border line from trees and shrubs, equipping with engineering structures (bridges, paths, etc.), but sometimes also ploughing the border strip of the state border. The author agrees with several definitions on re-demarcation to be found in foreign literature and supplements the definition as follows: re-demarcation is the survey of demarcation of the state border in the area and the restoration with borderlines on the basis of pre-drawn bilateral documents: the description of the state borderline, topographical maps, border marking protocols, rules, terms and procedures of re-demarcation (Sukharev and Krutskikh, 2004). Although the re-demarcation term is not used in the Law on the State Border of the Republic of Latvia, its essence is apparent in the Article 5 of Law of the Republic of Latvia, which stipulates: "In accordance with concluded international agreements of the Republic of Latvia, the restoration of the state land border is performed (to eliminate the faults detected during border inspection), if necessary, with the respective neighbouring country's authorised representatives.

In the aspect of defining and demarcating the state border, the concept of rectification is also important, which Latvian law scholars have not paid special attention to. In turn, according to the definitions of the lawyers of other countries (Pavlovsky, Kovalev and Ermlovich, 2003) supplemented by the author, rectification should be regarded as insignificant amendment or refinement of the State border line, which is related to the necessity for its deviation in the area from a situation previously determined by the border treaty. Rectification of the State Border, prior to the delimitation of the relevant state border sections, is used for the construction of tunnels, hydroelectric plants, bridges and other structures and for the satisfaction of other economic interests of transnational states on or near the state border (Zalessy and Sobolevvsky, 2003).

The delimitation, demarcation, rectification and re-demarcation processes of the State border have international character and are implemented jointly, at least by two-state commissions consisting of representatives of national governments, state and border guard institutions. For example, a Mixed Demarcation Commission was established for the delimitation and demarcation of the State border between Latvia and Belarus, consisting of representatives of 10 states (institutions) and 4 representatives from border local governments for Belarus (Republic of Belarus, 1992).

After the restoration of the independence of the Republic of Latvia (1990), one of the main tasks was to restore the state border. Since one of the main features of a sovereign state is its ability to control its borders, in 1990 the Council of Ministers adopted a resolution establishing that the land borders of Latvia should be restored throughout their existence until 16 June 1940. The Council of Ministers, by the decision of 23 September 1991 (Republic of Latvia, Cabinet of Ministers, 2001), adopted measures for the first phase of the determination of the state border - the survey of the state border. The survey work was completed in 1992. These works were necessary for the State border to be taken over by the Ministry of Defence and for the Ministry of Foreign Affairs to enter into bilateral talks with all four neighbouring countries of Latvia on the restoration or establishment of the state border. This was followed

by measures for the alienation of the land border of the State border and the transfer to the Ministry of Defence (Republic of Latvia Council of Ministers, 1992). Thus, the mixed commission established by the Republic of Estonia, established under the Agreement between the Republic of Latvia and the Republic of Estonia on the Restoration of the State Border, commenced its work on July 17, 1992, and completed its work on December 21, 1999, the demarcated state border, the border marks and structures erected were transferred to the guarding of border guard institutions.

The re-demarcation of the boundary between the Republic of Latvia and the Republic of Lithuania was carried out on the basis of the "Agreement on the Restoration of the State Border between the Republic of Latvia and the Republic of Lithuania" (Republic of Latvia, 1993) concluded on 29 June 1993, Land Border re-delimitation Documents of year 1994, the "Instructions on re-demarcation of the state border between the Republic of Latvia and the Republic of Lithuania", decisions of the State Commission for Restoration of the State Border between the Republic of Latvia and the Republic of Lithuania and other instructions (Republic of Latvia, Cabinet of Ministers, 2002).

On the basis of the fact that by June 16, 1940, Latvia did not have a state border with Belarus because Latvia was then bordered by Poland, it was necessary to establish a state border with Belarus (Republic of Belarus, 1994; 1997). The completely demarcated state border between Latvia and Belarus was in 2008 (Republic of Latvia, Cabinet of Ministers, 2009).

The delimitation of the state border between Latvia and Russia was completed in March 2007, but the mixed demarcation commission started demarcation of the state border only in February 2011 but completed in 2017 (Republic of Latvia, 2017). A legally defined and demarcated state border between the countries will promote the further construction of the border, the alignment of border infrastructure, the fight against illegal migration and international organised crime, and will promote state security in general.

CONCLUSION

In the process of self-determination of the people, the principle of territorial jurisdiction is important, the implementation of which in turn requires the territory of the state, and therefore the determination of the state borders. The determination of the state border between the countries is influenced by political conditions, economic interests, mutual relations, international situation, traditions and customs, but the determination of the state border in the nature - also geographic peculiarities.

The term "border" shall be understood as all territorial and spatial propagation inherent in material and non-material systems. The boundary is a gap between systems. By the border line and the vertical plane that coincides with it, the states as entities of international law are separated from each other, cooperate with each other and also define each other. By contrast, the concept of "state" reflects a grand socio-political formation with system-specific features such as community, relative autonomy, persistence and interdependence of system-forming elements.

In determining the state border according to the author's point of view, the following principles must be observed:

- ensuring national security and international security of the Republic of Latvia;
- mutual respect and respect for national sovereignty, territorial integrity and inviolability of the borders;
- multilateral and mutually beneficial cooperation between sovereign countries;
- peaceful settlement of national border disputes.

An essential aspect of determining the state border is the determination of the state border regime. Between Latvia and Russia, the state border regime should be established by a separate agreement.

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From the perspective of the author, the State border regime should be supplemented also with the provisions of the regime in terms of international law, such as:

- the inviolability of the national territory, where the state border serves the demarcation of the state territory from other territories as a warning to other states or subjects of international law and citizens of other countries on the expiration of the jurisdiction of one state and the commencement of another state's jurisdiction;
- international recognition of the state border, which manifests itself in the international recognition of the state border line, the territorial separation of two or more countries or the separation of the state from other legal systems, the location of such a state border line in nature is coordinated between neighbouring countries and is legally based on multilateral international agreements;
- the international determination of the national border, which is closely linked to the international recognition of the state border and manifests itself in an internationally developed legal procedure in two mutually independent but complementary processes in delimitation and demarcation;
- maintenance of the state border, which must understand the procedure by which international cooperation ensures the maintenance of the state land border established in accordance with the international agreements concluded by the Republic of Latvia as well as the preservation of the border signs and other building structures or elements and compliance with the requirements of the said agreements.

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THE WEARING OF HEADGEAR ON IDENTIFICATION PHOTOGRAPHS AS RELIGIOUS EXPRESSION IN FRANCE AT THE EUROPEAN COURT OF HUMAN RIGHTS

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ABSTRACT

The presented paper focuses on the freedom of religious expression through the wearing of headgears on identification photos in France with the emphasis on the decisions of the European Court of Human Rights and UN Comission on Human Rights. The article shows a situation regarding ID photos in France and the national legislation and also will show the different treatment of different religious groups, where not all of them were treated by public authorities as the other ones. The main issue on which the contribution answers, is whether certain religious groups of the population suffer at the expense of the other in cases of obligations required by the authorities when presenting ID photos. The answer to this question could be found through the case-law of the French State Council and other national courts, which dealt with not only a case of Mann Singh.

Keywords: Religious expression, Identification photographs, ECHR, United Nations Comission on Human Rights.

INTRODUCTION

French law sets strict rules on what criteria must be met by identification photos of applicants wishing to issue an ID, driving license or passport. Most of these laws include the requirement to display a face without a headgear (France, Minister of Transport, 2005). However, this legal requirement is quite often seen as an interference with the freedom of expression of religious beliefs. For some religions, a certain garment or religious symbol is part of their identity (Singh, 2014). The members of the faith then feel bound to their rights when they are forced to appear on identification pictures without these symbols and clothing. France, however, requires strict adherence to these statutory requirements, and the State Council has already dealt several times with having to balance between freedom of religious expression and other legitimate aims. The most well-known case was then dealt with at the European level before the ECHR.

THE VIEW OF EUROPEAN COURT OF HUMAN RIGHTS VERSUS THE VIEW OF UNITED NATIONS COMISSION ON HUMAN RIGHTS

The most famous case, which was solved by the ECHR in connection with the freedom of religious expression in France and the identity photographs is a case of Mann Singh versus France (2008). The complainant Shingara Mann Singh, he practiced sikh religion, which requires its members to wear a turban on head continuously. The complainant had to renew regularly under French law his driving licence. The last time he did so in the year of 1998, when he added for a release of new driving licence an identity photo with a turban on his head. In this moment the driving licence had been issued without a single problem.

In the year of 2004 the complainant demanded the release of a copy of this document, insomuch as the original was stolen. However, the Prefecture of Val d' Oise refused his request, because on the identity photograph he wore the turban on his head. The complainant therefore returned to judicial power, when both the first and also second instance courts did not comply with his request. So the complaint appeared at the french State council. It has decided, that the

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prefecture is liable to assess the complainant's request again in the light of a previous circular (1999).

The day after this decision the Minister of Transport (2005) sent to all French prefectures new circular, which stipulated the duty of providing a full face photography without any headgear for releasing the new or even a copy of a driving licence. After the reassessment of the request, prefecture decided again refusing the issue of a copy of the driving licence with reference to the provisions that contains the new circular. After this decision complainant together with the association United Sikh filled an application to French Council of State for cancellation of this particular legal document. The Council of State however has rejected this request. At the same time, the complainant also demanded cancellation of the decisions of the national courts. At the same time, the petitioner also demanded the annulment of the prefect's decision in question before the French national courts and later also by the State Council. It decided again, but differently than in the first case, when it also relied on the requirements of the new circular and stressed that these conditions are used to prevent fraud and counterfeit the identity. In addition, the State Council stated that the newly-accepted condition of delivery of a photograph without a headgear is not disproportionate or discriminatory, and that the previous tolerance of wearing a turban on an identification photographs effectively did not prevent the possibility of counterfeiting or identity theft, as the number of these crimes increased considerably in previous years.

Mr Mann Singh then filed a complaint to the ECHR (2008) claiming an infringement of Articles 8 and 9 in conjunction with Article 14. He objected the violation of the right to private and family life and also the interference with freedom of religion and thought. The ECHR has gone through all the points of the five-step test and has dealt most with the last requirement, a necessity in a democratic society. Here he pointed out that everyone has the right to practice their religion, either alone or together with others. He also expressed the need to wear a turban where it is for the sikh religion not only religious beliefs, but even a part of their identity. On the other hand, however, the court has pointed out its earlier decisions in which it expressed its view that it is necessary, for example, to remain in the security requirement as was the case of Phull versus France (2005) or El Morsli versus France (2008) or that there are rights and freedoms which prevail over freedom of religion. This right is, for example, the right to life, as the Commission for Human Rights has ruled in its judgment X. versus The United Kingdom (1978), when the Sikh religionist had to wear a safety helmet on the road and hence could not have turban at the same time.

The ECHR has returned to its previous legal position and, in the case of Mr Mann Singh, stated that the requirement of an uncovered head on identification photographs serves public authorities to preserve public safety and protect public order. Additionally, it also serves as a quicker identity check at roadside inspection. The ECHR also stated that, given the wide discretion enjoyed by the States in this respect, the conduct of the public authorities is proportionate and justifiable (2008). However, the complainant's request did not meet the requirements of the Convention and was therefore declared inadmissible.

This case is very interesting because, despite the fact that the complainant failed at the ECHR, he filed a complaint to the United Nations Commission on Human Rights, which did not concern the issue of a driving license but a passport (Singh versus France, 2013). The Commission has dealt with a violation of Article 18 of the ICCPR, concluding that this violation has actually occurred. According to the Commission, France did not sufficiently address the requirement to justify the need to impose an obligation to appear on ID cards without headgear. The Commission also states in the reasoning that France has not explained why it is a problem to have a turban that covers only the top of the head and the part of the forehead when at the same time leaves the whole face clearly recognizable and why the

photograph could have resulted in the situation that the person who is shown in the photo will not be identified, when in the ordinary life this person will always wear a turban on his head.

In addition, the Commission indicates in its decision that this practice on the part of the state authorities may lead to a situation where a member of the Sikh confession will always have to be bareheaded on each photograph, even though it will be a one-off event. This could mean that his freedom of religious expression will continue to be restricted in the course of security checks, when security staff may demand that the turban be deferred in control.

The Commission therefore decided that the right to freedom of religion, which is enshrined in Article 18 of the ICCPR (1966), was violated and called on France to take corrective action within one hundred and eighty days.

At this point, it is important to note that such a decision by the United Nations Commission on Human Rights is not the only one that has previously issued, a decision on the reconnaissance photo, this time on the permit to extend the residence permit where the Sikh member also appeared with a headgear, when the UN Commission on Human Rights used exactly the same arguments (Ranjit Singh versus France, 2011). In addition, a general comment was made on Article 18 of the ICCPR (1993, General Comment no 22), which deals among other things with what can be seen as freedom of religion and related expression. The fourth paragraph of this commentary states that practicing religions are not just ceremonies, but also different garments, or just head-dresses.

In addition, this concept of the Commission on Human Rights supports the claim that believers are restricted by public order or security, but this limitation is totally disproportionate. In addition, it has to be added, as rightly stated in the Commission's decisions, that these people will continue to wear different headsets related to their religion in everyday life, and so will be publicly recognizable. Furthermore, the fact that the headgear or Muslim scarf covers only a part of the head or face and the face is otherwise recognizable again speaks to the complainants.

It should be noted that both the Commission and the ECHR are deciding on transnational legislation, where both documents enshrine the freedom of religion similarly, if not a few words in the same way, and even though these institutions are interpreted differently. It may seem that the ECHR is rather reluctant and concealed under the doctrine margin of appreciation when deciding on religious matters in relation to France, and the Commission can, on the other hand, make an authoritative decision on state wrongdoing and on inappropriate interference with fundamental rights.[2] It remains a question of whether the ECHR will be influenced by decisions of the United Nations Commission on Human Rights and will also make an authoritative decision whether to favour or to the detriment of freedom of religion.

DEVIANT CASES OF NATIONAL FRENCH COURTS

If we are now return to the national level, not only the case of Mann Singh has appeared before the French Council of State. The Council also dealt with further complaints regarding not only the issuance or non-renewal of driving licenses, but also citizens' IDs and passports. The claim that in similar cases with different religious groups is treated differently confirms the case handled by the French Council of State. It was a renewal of the ID card, more precisely the cards entitling to stay in France, Sister Adalbert (La Depeche, 2003). This sister and also mother Superior was a member of the order of the Carmelites of Polish descent. At the prefecture of Var, she applied for an extension of her residence permit after ten years, when she did not deliver a current photograph that would meet the face-to-face requirement without a headgear. However, despite this fact, she was granted permission to do so by referring to the fact that the same photograph with a typical sister's cap is also in the Polish passport. After this event, of course, negative responses began to be heard, especially by the Association of French

[2] For further information, we can recommend the United Nations Human Rights Commission's decision Bikramjit Singh versus France (2012).

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Muslims. The French satirical Le Canard enchaîné, who wrote in the May issue of 2003, said: *"In addition to their clothing: they never go out without a double-tight, scarf, which can not be complained of by the Ayatollah himself."* The sister reportedly told her in the media that she was used to wearing a scarf for twenty-five years continuously and was not going to change anything.

In these cases we can see the already mentioned religiously required garment, which is not obligatory for all members of the Christian faith. It is a question of whether the sister cap's postponement would be a restriction or interference with the freedom of religion so large that a nurse may feel affected.

On the one hand, the decision to be a nurse is a completely free decision of the woman, at the discretion of her. Additionally, the Bible does not require believers to wear certain clothing, but requires only modesty. This modesty is certainly only filled with a sister's robes, and the headgear is not strictly required. Furthermore, if a nurse was forced to take off her cap, she might feel affected by her rights, but the often-used argument of the right to self-determination or that religious clothing is part of an identity is in place. Since Christianity does not require precise clothing, such as the subject Sikhism, where turban is already a part of the identity of a believer, it remains for every believer to wear religious clothing or not. Restrictions would be proportional in this case, and would not be an interference with the human identity itself.

The renewal of the residence permit issued with faulty ID cards clearly demonstrates that they are treated differently in the same cases. The question arises as to whether certain religions in France are preferred to the detriment of others and whether there is no purposeful discrimination against members of different religions than traditional Christianity. For these examples, such as not issuing a driving license, non-renewal of a ID or refusal to issue a passport, it could be said that yes.

Another such consideration that is being offered in connection with this issue is Jewish yarmulkes, or kippahs and other headgear, which only cover a certain part of the skull, and not the whole head. If a person is portrayed from the front view, these parts of a head are not usually visible. It is a question whether there is an obligation to take a photo without a headgear. If it should be followed strictly in accordance with the law, it would also be appropriate for such religious headgear to be deferred when making identification papers. On the other hand, however, these do not interfere with the face, or more, are not visible at all. Given the fact that no case of deferment of the yarmulkes or any other case of interference with the freedom of religious expression of believers carrying only blankets covering only a small part of the head in France has been dealt with in connection with identification photographs, it is impossible to answer that question unequivocally. The cases dealt with by the French Council of State concerning the imposition of the obligation to defer the kippah appear only in the field of education, exactly in school (France, State Council, 2009).

CONCLUSION

In the above-mentioned cases, it can be seen that the supranational institutions decide in similar cases quite differently and each of them in their justification prefers another public good. It is well known that the ECHR is relatively restraint in its decisions on religious freedom and gives the state a broad margin of appreciation. It is a question of whether its approach will change over time. The difference between the decisions of the French national courts is, however, overwhelming. Different treatment of different religious groups in identical matters could be described as indirect discrimination. It is not possible for France to report to the plurality of religion in society and consequently to restrict the manifestations of some religions to the detriment of others. It is true that France, like most European states, is built on the tradition of

Christianity, but nowadays, culture and the country itself is considered to be strictly secular and neutral with regard to religion, it is inadmissible to make decisions in similar cases of religious manifestations diametrically different. As an option to prevent further conflicts, it is proposed to amend the legislation that could enshrine exceptions when it will be allowed to appear on identification photos in religious clothing or with a religious symbol. Or, the second option offers the same treatment for all religious groups, including Christian nurses, who would also appear on the photographs in the future without any headgear, religious suits, or symbols of other religions.

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A STUDY OF EXCHANGE RATE IMPACT ON BALANCE OF PAYMENT AND FIRMS' REVENUE

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ABSTRACT:

Balance of payment (BOP) is a very crucial term which records all the transactions taking place between two countries in a financial year. The mechanism of exchange rate works to exchange international currency into the domestic currency and vice versa. International economics is very dynamic, and if anything unpleasant (e.g Greece crisis, Brexit etc.) happens anywhere in the world, it may have an impact on exchange rate, BOP and finally the NFE position of country which may be positive or negative. The increasing level of business at international level exposes them to the external risk of exchange rate change. This research paper endeavours to understand the aspects related to exchange rate mechanism and its impact on firms' revenue and BOP. A descriptive research study is done by targeting firms operating in international market in Pune by personally interviewing them.

Keywords: International Economics, Exchange Rate, Balance of payment.

INTRODUCTION

In the recent past, many new words have been emerged in relation with international trade. Some of them are very popular such as glocalisation, global village, internationalisation etc. The base for creation of these words has become possible due to the increment in trade across the national border. The increasing demand and never ending market are playing vital role of expanding the business across the global. In fact the customers have also become now as a global customer. From any country customers can demand the product from any country and same as the customers of any country can be a market for any country's companies. Increasing number of trade across the national border has given rise to many new concepts and requirements e.g if trade takes place then money transaction also takes place so monitoring of money movement and recording all the transactions carefully and legally is the requirements of the hour. Another important aspect linked with international trade is recording of all the credit and debit transactions properly. This is a very challenging and tedious task to record all the transactions and make sure that no illegal activity and transaction happen across the national border. Although, India has a watchdog known Enforcement Directorate (ED) which looks after the legality of international transactions still it is important to keep the close eye and record all the transactions properly. As far as recording of transactions are concerned, India is active and all the credit and debit international transactions are recorded under Balance of Payment. However, along with recording of all transactions the exposure towards the risk of change in the currency value is another crucial aspect in International Economics. As mostly transactions across the Indian national border do not take place in domestic currency (INR), they take place in foreign currency whose value is dependent on market and the change in the value of foreign currency can make an impact on overall business in India. The records of all those transactions happen with Balance of payment which may also be exposed with the risk of change in foreign currency exchange value.

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BALANCE OF PAYMENT

The balance of payments (BOP), also known as balance of international payments, summarises all transactions that a country's individuals, companies and government bodies complete with individuals, companies and government bodies outside the country. These transactions consist of imports and exports of goods, services and capital, as well as transfer payments such as foreign aid and remittances.

In India's balance of payments (BoP), transactions are recorded in accordance with the guidelines given in the fifth edition of IMF's Balance of Payments Manual (1993), with minor modifications to adapt to the specifics of the Indian situation. The Manual defines BoP as a statistical statement that systematically summarises, for a specific time period, the economic transactions of an economy with the rest of the world. Transactions between residents and non-residents consist of those involving goods, services, and income; involving financial claims on and liabilities to the rest of the world; and those classified as transfers, involving offsetting entries to balance one-sided transactions. The data are received from the banking system as part of the Foreign Exchange Management Act (FEMA), 1999. The data are received by the Reserve Bank of India mainly from the banking system (authorised dealers) as part of the Foreign Exchange Management Act (FEMA), 1999. The basic structure of the Balance of Payments (BOP) of India consists of Current account, Capital account, and Financial Account.

- **Current account:** The current account includes flows of goods, services, primary income, and secondary income between residents and non-residents and thus constitutes an important segment of BoP. The primary income account reflects the amounts payable and receivable in return for providing temporary use of labour, financial resources, or non-produced non-financial assets (natural resources). The secondary income account shows redistribution of income between resident and non-residents, i.e when resources for current purposes are provided without economic value being exchanged in return (transfers).

- **Capital account:** On the other hand, the capital account comprises credit and debit transactions under non-produced non-financial assets and capital transfers between residents and non-residents. Thus, acquisitions and disposals of non-produced non-financial assets, such as land sold to embassies and sales of leases and licenses, as well as transfers which are capital in nature, are recorded under this account.

- **Financial Account:** The financial account reflects net acquisition and disposal of financial assets and liabilities during a period. Further, it shows how the net lending to or borrowing from the rest of the world has occurred. Conversely, it shows how the current account surplus is used or the current account deficit is financed.

The Reserve Bank of India (RBI) has been compiling and publishing Balance of Payments (BoP) data for India since 1948. Since then, several developments have taken place both globally and domestically. Considering these developments and to bring out a comprehensive Balance of Payments Manual documenting current practices, procedures of compilation, presentation, coverage and sources of data for India's balance of payments and assess them in relation to international best practices.

EXCHANGE RATE

Exchange rate is the price of one currency in terms of another currency. A foreign exchange rate is the relative value between two currencies. Simply put Exchange rates are the amount of one currency you can exchange for another. In finance, an exchange rate is the rate at which one currency will be exchanged for another. It is also regarded as the value of one country's

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currency in relation to another currency. The exchange rate is an important determinant as it has deep influences on economy, financial markets and citizens. The exchange rate is referential to today's financial markets because it reflects elements of competitiveness, and its evaluation is essential as it encloses influences from a multitude of factors, but at the same time its alteration has multiple implications on external competitiveness, real economy and financial markets (Bostan, 2018). The relationship between the exchange rate and its determinants are defined as bidirectional relationship. The economists are of the view that the behavior of foreign exchange rate is highly dynamic, and it is affected by macro and microeconomic fundamentals, aggregate supply, aggregate demand, nominal, monetary and real shocks, order flow, foreign investment flows (foreign direct and portfolio investment), changes in equity returns, turnover in Forex market, interest rates, tariffs and many such related factors (Singh, 2014). Exchange rates are determined in the Foreign Exchange Market which is now working as economic concept of demand and supply. In International economics the demand and supply of the particular currency determines its exchange rate. So the currency exchange rate keeps on changing in International market. And the change in exchange rate makes an impact on international business because this change makes an impact on revenue of domestic firms. The exchange rate is a key financial variable that affects decisions made by foreign exchange investors, exporters, importers, bankers, businesses, financial institutions, policymakers and tourists in the developed as well as developing world. Exchange rate fluctuations affect the value of international investment portfolios, competitiveness of exports and imports, value of international reserves, currency value of debt payments, and the cost to tourists in terms of the value of their currency. Movements in exchange rates thus have important implications for the economy's business cycle, trade and capital flows and are therefore crucial for understanding financial developments and changes in economic policy (Khandare, 2017). The currencies are allowed to fluctuate with respect to one another within a specified limit. If the exchange rate between any two currencies reaches the limit then the central banks of both the countries intervene to bring it back within the limit. It is very important to understand exchange rate before sending and receiving money internationally. There have been many other factors having the capacity to affect the valuation of the currency. In fact even economic formulas can also be used to find currency valuation based on theory of economics and prediction of future values through different prediction models. Everybody involved in currency trading are always interested in better prediction of future values of the currency which is extended to international trading as well. As it is highly uncertain, it is not possible to exactly predict the value of a currency but we can get nearer predicted value using various statistical models and other advanced prediction models (Patel, 2014). There are as long as eight studied factors which are important to understand and which make impact on the changes in exchange rate.

- **Inflation Rates:** Changes in market inflation cause changes in currency exchange rates. A country with a lower inflation rate than another's will see an appreciation in the value of its currency. The prices of goods and services increase at a slower rate where the inflation is low. A country with a consistently lower inflation rate exhibits a rising currency value while a country with higher inflation typically sees depreciation in its currency and is usually accompanied by higher interest rates.
- **Interest Rates:** Changes in interest rate affect currency value and dollar exchange rate. Forex rates, interest rates, and inflation are all correlated. Increases in interest rates cause a country's currency to appreciate because higher interest rates provide higher rates to lenders, thereby attracting more foreign capital, which causes a rise in exchange rates Country's Current Account / Balance of Payments: A country's current account reflects balance of trade and earnings on foreign investment. It consists of total number of transactions including its exports, imports, debt, etc. A deficit in current account due to

spending more of its currency on importing products than it is earning through sale of exports causes depreciation. Balance of payments fluctuates exchange rate of its domestic currency.

- **Government Debt:** Government debt is public debt or national debt owned by the central government. A country with government debt is less likely to acquire foreign capital, leading to inflation. Foreign investors will sell their bonds in the open market if the market predicts government debt within a certain country. As a result, a decrease in the value of its exchange rate will follow.
- **Terms of Trade:** Related to current accounts and balance of payments, the terms of trade is the ratio of export prices to import prices. A country's terms of trade improves if its exports prices raise at a greater rate than its imports prices. This results in higher revenue, which causes a higher demand for the country's currency and an increase in its currency's value. This results in an appreciation of exchange rate.
- **Political Stability and Performance:** A country's political state and economic performance can affect its currency strength. A country with less risk for political turmoil is more attractive to foreign investors, as a result, drawing investment away from other countries with more political and economic stability. Increase in foreign capital, in turn, leads to an appreciation in the value of its domestic currency. A country with sound financial and trade policy does not give any room for uncertainty in value of its currency. But, a country prone to political confusions may see depreciation in exchange rates.
- **Recession:** When a country experiences a recession, its interest rates are likely to fall, decreasing its chances to acquire foreign capital. As a result, its currency weakens in comparison to that of other countries, therefore lowering the exchange rate.
- **Speculation:** If a country's currency value is expected to rise, investors will demand more of that currency in order to make a profit in the near future. As a result, the value of the currency will rise due to the increase in demand. With this increase in currency value comes a rise in the exchange rate as well.

When a large domestic economy liberalises and gets increasingly integrated with the global economic, the influence of the external sector, including the exchange rate movement could become substantial during the transition. This transition points out that exchange rate volatility have a negative impact on trade (Jayachandran, 2013). And the above mentioned factors must be studied to get better idea to evaluate the optimal time for international money transfer, if international transactions take place. To avoid any potential falls in currency exchange rates, opt for a locked-in exchange rate service, which will guarantee that your currency is exchanged at the same rate despite any factors that influence an unfavourable fluctuation.

EXCHANGE RATE MECHANISM:

Exchange rate mechanisms, or ERMs, are systems designed to control a currency's exchange rate relative to other currencies. At their extremes, floating ERMs allow currencies to trade without intervention by governments and central banks, while fixed ERMs involve any measures necessary to keep rates set at a particular value. Exchange rates can be found in a number of different places, ranging from commercial banks to specialty websites like XE.com. Travellers looking for simple conversions can often find rates posted at airports or local banks, while international investors trading in the foreign exchange ("forex") market can look towards their trading platform for real-time information.

Calculating exchange rates may seem simple on the surface, but it can be confusing to those that don't remember mathematics from school. While converting $100 to foreign currency when traveling isn't a big deal, converting currencies when analyzing a foreign stock's financial statements can mean big differences for international investors trying to make investment decisions. Let's look at an example of how to calculate exchange rates:

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Suppose that the EUR/USD exchange rate is 1.20 and you'd like to convert $100 U.S. dollars into Euros. To accomplish this, simply divide the $100 by 1.20 and the result is the number of euros that will be received - 83.33 in that case. Converting euros to U.S. dollars involves reversing that process by multiplying the number of Euros by 1.20 to get the number of U.S. dollars.

Exchange Rate Impact:

According to conventional analysis, a key factor in exchange rate determination is the state of the balance of payments. An increase in imports gives rise to an increase in a demand for foreign currency. To obtain the foreign currency importers will sell the domestic currency for it. Obviously, this will lead to the strengthening in the exchange rate of the foreign currency against the domestic currency, so it is held. Conversely, if there is an increase in exports, all other things being equal, then once the exporters exchange their foreign currency earnings for domestic currency this sets in motion a strengthening in the domestic currency exchange rate against the foreign currency. The effect of real effective exchange rate (REER) on the share of exports of Indian non-financial sector firms and found that, on an average there has been a strong and significant negative impact of currency appreciation as well as currency volatility on Indian firms' export (Cheung and Sengupta, 2012). There have been studies which defined (Bal, 2012) no statistical and significant relationship between the exchange rate volatility and export of the country. However, the short term disequilibrium of exchange rate negatively affects the export of the country. The phenomena of Indian real exports are co-integrated with exchange rate volatility, real exchange rate, gross domestic product and foreign economic activity and the exchange rate volatility has significant negative impact on real exports both in the short-run and long-run, implying that higher exchange rate fluctuation tends to reduce real exports in India (Srinivasan and Kalaivani, 2012). In this way of thinking, exporters determine the supply of foreign currency whilst importers determine the demand for foreign currency. Hence, the interaction between the supply and demand establishes a foreign exchange rate. Following this logic, it makes sense to conclude that the state of the balance of payments, which is the result of the interplay between exports and imports, is a key in determining the foreign exchange rate.

OBJECTIVES

1) To study balance of payment in India
2) To understand the exchange rate mechanism
3) To understand the impact of exchange rate on business

RESEARCH METHODOLOGY

This research paper uses descriptive research methodology wherein the phenomena related to the understanding impact of exchange rate on business studied. To understand the phenomena 30 firms were interviewed with structured questionnaire. The sample firms are those firms which are involved in international business through export and import. This research paper is examining the fact of impact on balance of payment through the firms involved in export and import as these transactions are recorded under current account of balance of payment. A structured questionnaire was presented to those firms to understand the impact of exchange rate on their revenue and finally on Balance of payment. There are ten variables related to the study which were asked as question with likert scale 1 to 5. The analysis of the study is done with the help of t-test statistical tool.

DATA ANALYSIS

Data analysis was done after collecting primary data from the sample firms. To test the hypothesis t-test used on collected data.

H0: Change in exchange rate does not make any impact on the final revenue of Export Import firms in Pune.

H1: Change in exchange rate makes impact on the final revenue of Export Import firms in Pune.

t-test

A *t-test* is an analysis of two populations' means through the use of statistical examination; a *t-test* with two samples is commonly used with small sample sizes, *testing* the difference between the samples when the variances of two normal distributions are not known. The test is used to do the data analysis and test the hypothesis.

Table 1:- Calculation table of t-test through SPSS software.

One Sample T Test			
Test Value – 3.5			
Variables	**T**	**Df**	**Sig. (2-tailed)**
VAR00001	3.166	29	.004
VAR00002	3.988	29	.000
VAR00003	3.058	29	.005
VAR00004	3.148	29	.004
VAR00005	2.923	29	.007
VAR00006	3.856	29	.001
VAR00007	3.004	29	.005
VAR00008	2.926	29	.007
VAR00009	3.580	29	.001
VAR00010	3.286	29	.003

Source: Calculation of primary data in SPSS

P Value

As per the data recorded and analyzed in **table 1** which was done with the help of SPSS software. The *t* column shows the calculated value of *t* for all 10 variables. The second column on *df* show the degrees of freedom which is calculated with the formula (N-1) whereas N is number of respondents. The last sig (2-tailed) column gives the P values.

The value of *t* is calculated 10 % level of significance and after getting value of P for all 10, research compared the P value with level of significance. The calculated values for all 10 variables in P column in the table are less the level of significance "0.1" hence it means that null hypothesis is rejected and alternate hypothesis that, "Change in exchange rate makes impact on the final revenue of Export Import firms in India." is accepted.

FINDINGS AND DISCUSSIONS

Growing importance and relevance of international transaction in international economy has given a rise to this topic of exchange rate. Researcher prepared a questionnaire the 10 relevant variables whose answer was given by firms involved in export and import. These transactions are recorded under current account of BOP and highly exposed to the risk of change in exchange rate. On the basis of answers received form the sample units; data was analyzed with the help of t-test. SPSS software was used for data analysis with 10% level of significance and

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P value was generated for all the variables. P value then compared with the level of significance (0.1) and P value was less for all 10 variables which helped to interpret the result of data analysis along with hypothesis result.

Major finding of this research is based upon the data analysis. Researcher found that changes in exchange rate is not just dependent on any one particular factor. It is influenced by many related factors which can make an impact on change in currency exchange rate. When there is a fluctuation in exchange rate it directly makes an impact on the final, if the trade happens in international currency rather domestic currency.

Another finding of the study that if the value of domestic currency depreciated then country should focus more on exporting the goods so that return value be more. If the value of domestic currency is appreciated then exporters feel demotivated but importers try to capitalise as they have to pay less for purchasing anything from international market.

Researcher also found that individual firms are always exposed to the risk of change in currency exchange rate whenever they do business in international market. Any fluctuation in exchange rate can affect business adversely.

CONCLUSION

International economics is a wide and significant concept in today's era of globalisation. This research supported a lot to understand the dynamism of international economics and related concepts. This research was a good effort to understand the phenomena such as exchange rate mechanism, balance of payment, different accounts under BOP and impact and relationship among these phenomena. This study primarily gives access to the information and knowledge about international economics scenario along with its related business atmosphere at global level. This business atmosphere at international level is affected when trade happens across the national border as it is exposed to the risk of fluctuation in currency value. When there is a fluctuation in currency exporter and importer face challenges because it directly makes an impact of revenue if deal is done in international currency. Indian government promotes export and if the value of domestic currency appreciates then exporters feel demotivated. In both cases; appreciation and depreciation of domestic currency the current account of BOP gets affected because all the transactions are recorded in BOP account. If exporters get demotivated and importers do more imports than it makes and adverse impact on current account of BOP, hence researcher gets the conclusion that change in exchange rate can make an impact on balance of payment of India.

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TO EXPLORE THE PASSENGER PATTERN AND PASSENGER PREFERENCES WITH RESPECT TO SERVICE QUALITY DIMENSIONS OF INTERCITY BUS PASSENGER TRANSPORT

MR. NAVEEN BANGALORE RAMU[1] AND ANJULA GURTOO

Public transportation has become one of the cornerstones of a country's infrastructure development. In particular, road transportation plays a critical role in developing countries, as large numbers of people use bus transportation as the means to commute between one placeto another for work, home, visiting friends, trips etc. According to KSRTC key statistics (2015), on an average, 26.90 lakh passengers travel in Karnataka every day. Ensuring the service quality in this service, therefore, is crucial. There are limited scientific studies, however, on the service quality of intercity passenger transport in India, especially with regard to infrastructure aspects.

In this paper we explore the passenger pattern and passenger preferences with respect to service quality dimensions of intercity bus passenger transport. This study is based on primary data. A structured questionnaire captured passengers' perception on service quality of intercity bus passenger transport. Statistical techniques for data analysis involved factor analysis to explore the underlying factors, Cronbach alpha test in order to see the reliability of questionnaire, K-means cluster analysis and ANOVA. Taking 26.90 lakh per day as the sample population, with 95% confidence level and 4% margin of error, the sample size for passenger questionnaire is 600.

Results demonstrate three types of passenger profile emerging from the data (K-means cluster analysis). Passengers are clustered into three types based on their preferences. High service quality preference cluster (HSQP) constitutes high average score for most of the service quality factors leading to higher perception of service quality by passengers. Low service quality preference cluster (LSQP) constitutes low average score for most of the service quality factors leading to lower perception of service quality by passengers. Moderate service quality preference cluster (MSQP) constitutes moderate average score for most of the service quality factors leading to moderate perception of service quality by passengers. This study helps in identifying the service quality parameters from the passenger perspective for intercity bus transportation. This helps the intercity transport organizations to devise a strategy for service quality for competitive edge.

4-BM15-6642

THAI POSTMODERN LITERATURE AND THE PRESENTATION OF MALE PROSTITUTES

DR. ORATHAI PIAYURA[2]

This article is a part of a research entitled Postmodern Literature in Thailand. The research studied the phenomenon of changes in forms and contents of literature when the society responded to the delegitimation and dedifferentiation of Postmodernism. This article discussed the presentation of male prostitutes in gay literature as a change in content of the literature. Data were collected from selected short stories on Thai gay websites. The selected texts were analysed by gender and sexuality approach.

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[2] Dr. Orathai Piayura, Assistant Professor, Khon Kaen University.

The results of the study revealed that male prostitutes being presented in gay literature were mainly students with poor background. There were only small numbers of professional prostitutes. The reasons for entering the career of prostitution were financial problem and being rape by other men. The body was central of male prostitutes and their clients 'main concern. Sexual desire was expressed both in private space and public space.

Keywords: Male Prostitute, Thai Postmodern Literature, Gay Literature

7-BM17-6557

CONSTITUTIONAL IDENTITY AND ETERNITY CLAUSES IN THE CONSTITUTIONS AND THE CONSTITUTIONAL PRACTICE OF THE MEMBER STATES OF THE EUROPEAN UNION

DR. ZSUZSA SZAKÁLY[3] DR. NORBERT TRIBL[4]

Constitutional identity is one of the most controversial, also prominent area of the European constitutional theories, both in academic literature and in the practice of the Constitutional Courts. As the historical, economic, political and social structure of the constitutional systems of the Member States of the European Union differ, also their concept of constitutional identity and eternity clauses could be object of examination due to their diversity. Our aim is to examine these issues in connection with each other, which could be found in the practice of some Constitutional Courts of the Member States of the European Union.

The very notion of constitutional identity itself is foundation of academic disputes across the European Union, so our aim is to map out what the Constitutional Courts of the Member States understand under this concept. The question of eternity clauses seems easier to decide on the first glance, albeit the possibility of the explicit and implicit eternity clauses could generate further disputes. The eternity clauses also could help to obtain clearer view about the basic provisions and principles of the European constitutional system, which could be seen as the foundation of the European Union itself.

The connection between the two topics is apparent when it is "found" by the Constitutional Courts of the Member States as they got the privilege to decide on the meaning of the constitutional principles. (Perhaps the two sides of the same coin?) To analyze our concept of the possible connection between these two topics, we created a questionnaire which was sent to every Constitutional Court of the Member States or institutions with the same purpose. The answers made possible to explore the functions of eternity clauses and references to constitutional identity in the jurisprudence of these courts.

The results of the questionnaire also provided new fields for thought to enlighten the national characteristics of the Member States and showed the organic development of European constitutionalism due to the changing constitutional environment. In relation to the above-mentioned, the aim of our presentation is to present the results of our research, which show that unity exists in the diversity within the question of constitutional identity and eternity clauses in the European Union as well.

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10-BM19-6608

NATIONAL SECURITY EXCEPTION IN THE WORLD TRADE ORGANIZATION: OPENING THE PANDORA BOX

MS. PRISCA RUMOKOY[5]

The year 2018 has been a challenging time for the global trading system. The United States (U.S) have increased their tariffs in several sectors causing other countries to retaliate and triggering trade wars. Recently on March 2018, President Trump invoked Section 232 of the Trade Expansion Act of 1962 that allows the President to impose tariffs if an article being imported to the U.S. could impair the national security based on the recommendation from the U.S. Secretary of Commerce. After the U.S. Department of Commerce concluded that imports of aluminum and steel impose a threat to the U.S. national security, the U.S. then was set to raise their tariffs in such products. Following the U.S. policy, scholars begin to analyze the impact of the recent increase in tariffs in the global trading system. While most of the scholarship has been focusing on the economic consequences of the increased tariffs, there is only a few, if any, that addresses the legal implication of the U.S. policy to the international trade law regime. This paper argues that using the national security exception in the peacetime could undermine international law and threaten the rules-based global trading system. Although the World Trade Organization (WTO) allows national security exception under Article XXI, this exception has been like a Pandora box to the WTO members. This is because the WTO members realize that the national security exception is prone to abuse due to its unreviewable and self-judging's nature. History has shown that the WTO members have complied with the good faith obligation of this exception. However, that could change. With the U.S. using the national security exception as a disguise of arguably its protectionist policy, other countries may also start using the very same exception to justify the trade policies they favor, reducing the international role of the WTO, and potentially agitating trade wars.

11-BM09-6575

TRADITIONAL KNOWLEDGE AND INTELLECTUAL PROPERTY RIGHTS: THE ROLE OF FORMAL INSTITUTIONS.

MS. ANJALI LAKUM[6]

India is world famous for its traditional culture and traditional knowledge system derived from our ancestors. Today we are only focused on our culture but neglect our traditional knowledge system. India has the most expensive treasure of traditional knowledge rather than the other countries. In the modern time period, we run behind the modern culture and forget our own power of traditional knowledge. We say that experience is the best teacher and traditional knowledge comes with the experience of the life. The institutional scientists have often complained about lack of participation of villagers and communities in knowledge sharing. But they don't take proper step to solve this problem. This problem emerges because neither developing nor developed country's research council bothering about acknowledged local knowledge providers in villages by their name and address. Almost no institution wants to know that who their prior informed consent is. In recent time the scenario is changing in some of the developed countries but developing countries still lag behind in complete their

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responsibility towards knowledge providers. These traditional knowledge holders never complain when their knowledge is taken from them and documented by the other people, just as flowers don't complain when their nectar or pollen are taken away. We should be acknowledged by the knowledge providers by their name and address and we should also respect their intellectual property rights. The bees play a very important role in the continuation of nature's cycle with the function of cross-pollination. SRISTI plays the role just like this bees and started the conservation of this traditional knowledge. SRISTI started with supporting grassroots creativity innovation, and traditional knowledge holders and recently completed 25 years. It also helps to establish many other organisations which can help the people at the grassroots level. SRISTI organised several programmes to protect the intellectual rights of traditional knowledge holders. When you generate any wealth by the knowledge which you derived from the other people, however, you add value or not in that knowledge but you should give back the fair share to them. Because this wealth is only possible because of their knowledge. You should take the permission of prior informed consent before disseminating that knowledge or bringing it into the public domain. Today it is an international player in the promotion of entrepreneurship and intellectual property rights, especially in traditional knowledge and creativity. SRISTI's aim is not only preserving the traditional and grassroots practices but also creating a platform from where these traditional knowledge holders can share their knowledge and grassroots innovators can commercialise their products. It can be the first step in mapping the Intellectual Property Right of the traditional knowledge holders. In this paper, we will discuss the role of different formal organisations in protecting the intellectual property rights of traditional knowledge holders.

Key Words: Traditional Knowledge, Traditional Knowledge Holders, Intellectual Property Rights, Commercialisation, Grassroots Innovation, formal organisation.

13-BM06-6412

YOU REAP WHAT YOU SOW: DOES ACTIVATION ALWAYS INCREASE JOB SECURITY? EVIDENCE FROM THE YOUTH GUARANTEE

MS. CHIARA NATALIE FOCACCI[7]

"You Reap What You Sow": Does Activation Always Increase Job Security? Evidence From the Youth Guarantee Chiara Natalie Focacci* The paper uses non-experimental longitudinal data to study the effects of participating in the Youth Guarantee, an European Union's policy that targets inactive young people. A fuzzy regression discontinuity design is exploited to investigate whether participation in the programme has an advantage for the individuals in terms of both finding employment and being offered an open-ended contract.

14-BM21-6535

A NETWORK ANALYSIS OF THE US SUPREME COURT

MRS. FRANCESCA PAPA[8]

It is commonly assumed that, when resolving disputes, the Justices of the Supreme Court of the United States align along political lines, with liberal and conservative justices creating two opposing and dissenting factions. The ideological divide is thought to be the predominant determinant of judicial decision- making in the Court, and it is often considered to be the only

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determinant[9] (Devins and Lawrence, 2017) - or the only one that matters[10] (Fischman, 2018; Segal et al, 2002; Martin and Quinn, 2002). However, on a significant number of cases, the court's Justices have lined u;p in ways that greatly depart from what the liberals/conservatives divide would entail. This second pattern of alignment has been found to be systematic and consistent over time and law scholars have recently constructed new multidimensional spatial models to categorise the Supreme Court Justices. These models demonstrate that legal, rather than political, principles are often the drivers of judicial decision-making in the Court, notably in cases concerning the allocation of authority.

Our paper aims to reinforce the recognition of this second non-political dimension in the Supreme Court. We thus construct a network model which, by formalising the interrelations between justices, draws a picture of how often justices of different political positions interact and agree with each other. The network model highlights coalitions that go beyond and against the political divide and provides new insights on the mechanisms governing interaction among judges.

We attach Figure 1 as a visual exemplification of how individual Justices (the nodes) are linked to one another when we input agreement rates to function as edges. In this network model, we subdivide the nodes of the network between the two subgroups liberals/conservatives, identifying the formers as blue nodes, and the latter as red nodes, with color of nodes serving as an indicator of political affiliation. Examining the overall patterns of the network and its matches, we can observe a number of connections between red and blue nodes which would not be explicable if we adopted a unidimensional spatial model of the Court. While the strongest ties connect individuals of the same political ideology, the network clearly visualises the intuition that there exist some medium-strength connections between Justices which go beyond their red/blue political identity, as exemplified by Kennedy and Ginsburg/ Kennedy and Sotomayor. These realisations are legally and socially important, as they suggest that an attentive analysis of the relationships between justices might enable us to predict who is more likely to align with whom and who can serve as tipping vote.

We therefore hope to contribute, through this study, to the literature pointing at the realisation that justices are not simply "idealogical flag bearers"[11] (Fishman, 2016) but rather, they can be understood as experienced jurists with preferences on how the law should be interpreted and what outcomes it should attain. Equally, our model aims to open the way to future applications of network theory to legal questions, by defying the perception of a scarce intellectual proximity between the two fields.

16-BM16-6627

THE QUALITY OF BUDGET INSTITUTIONS IN EURO AREA COUNTRIES

MS. MOIRA CATANIA[12]

As a response to the sovereign debt crisis in the Euro Area, the Stability and Growth Pact has been strengthened whilst new requirements for budget institutions at the national level have

[9] Devins N. and Lawrence, B. (2017) Split Definitive: How Party Polarization Turned the Supreme Court intoa Partisan Court, 2016 *SUP. CT. REV.* 301

[10] Fischman, J.B. (2018) *The Authority Divide in the US Supreme Court*. Working Paper, University of Virginia; Martin and Quinn, (2002) Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S.Supreme Court, 1953-1999. 10 *POL. ANALYSIS* 134, 145; Segal, J. A., Epstein, L., Cameron, C.M. and. Spaeth, H.J. (1995) IdeologicalValues and the Votes of U.S. Supreme Court Justices Revisited. *Journal of Politics*, 57.

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also been introduced. Motivated by this wave of reforms, this paper aims to assess the quality of budget institutions across the EA countries. Following the approach adopted in other studies on budget institutions, this is carried out by constructing a composite numerical index covering the formulation, approval and implementation stages of the budgetary process and capturing the following dimensions: medium-term budgetary frameworks/targets, fiscal rules, the structure of budget negotiations within the executive, the structure of the process leading to the approval of the budget law in parliament, flexibility of budget execution, budget transparency and independent fiscal institutions. The index is compiled using data from the OECD, European Commission and IMF datasets, as well as some data generated through questionnaires directed to national authorities. This paper contributes to the literature by producing a comprehensive and comparable measure of the quality of budget institutions for all the Euro Area countries, which captures reforms implemented since the Great Crisis. The results of the scores for the constructed index show that, on average, Euro Area countries have budget institutions of medium quality. All those countries that have been bailed out during the Crisis, except Portugal, have medium to high quality budget institutions. In general, for the Euro Area overall, the strongest elements of budget institutions are in terms of the medium-term budgetary framework and the centralisation of budget formulation process, whilst the structure of the budget approval process constitutes the weakest dimension. The variation in the overall scores for the index are quite contained among Euro Area countries, but there is notably more variation in the different institutional dimensions. This shows that there can be different approaches to achieve good quality budget institutions, rather than a 'one-size-fits-all' form of fiscal governance, which contrasts with the common requirements for national budget institutions applying to all Euro Area countries introduced following the Great Crisis. The results also show considerable variation among the Euro Area countries also for those dimensions which are subject to common supra-national provisions, namely medium-term budgetary frameworks, fiscal rules and fiscal councils, indicating that the common Euro Area institutional requirements are also adapted to the national context.
Keywords: budget institutions, budgetary process, composite indices, Euro Area, Stability and Growth Pact

17-BV18-6474

THE IMPLEMENTATION OF VALUE-BASED INTERMEDIATION IN THE MALAYSIAN ISLAMIC BANKING INDUSTRY: THE PERCEPTION OF INDUSTRY PLAYERS

MR. MUHAMMAD ISSYAM ISMAIL[13]

In July 2017, the Central Bank of Malaysia issued the Strategy Paper on Value-Based Intermediation (VBI) which provides strategies to strengthen the roles and impact of Islamic banking institutions (IBIs) towards providing positive and sustainable values to the economy, community and environment. VBI is an intermediation function that aims to generate positive and sustainable impact to the economy, community and environment through practices, conduct and offerings without compromising the financial returns to shareholders. There many similar concept has been introduced in the finance industry worldwide such as Sustainable, Responsible and Impact Investing (SRI), Responsible Finance, and Environmental, Social and Governance (ESG). All of these concepts shares a common focus on economic and environmental sustainability for future generations. However, there are features that differentiate VBI from the rest of the concepts that will be pointed out by this paper. While other similar concepts are voluntary, the implementation of VBI has gained a lot of attention

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from around the world as it would be the first that such initiative comes from the Central Bank itself. As such, IBIs are expected to take the proactive actions in adopting the VBI initiatives in the respective IBIs' operation and business activities. As industry players are the main stakeholder in the implementation of VBI, this paper intends to analyze their perception towards the implementation of VBI. A survey had been conducted among the industry players which comes from Islamic bank, Islamic Insurance provider, investment companies and other related financial institutions. There are four main areas posed by the survey and will be analyzed by this paper which are awareness on VBI, implementation process of VBI, challenges in implementing VBI and suggestion by the industry players in implementing VBI. This paper concludes that the reception from the respondents towards VBI is very positive. However, there are some areas of concern that need to be overcome for better implementation of VBI.

18-BV11-6423

ALTERNATIVE METHODS OF ACCOUNTING FOR TAX FINES: A CASE STUDY ON TAX AUDIT REPORTS

MR. MUHAMMET EMRE DIRI[14]; AND PROF. TURGUT ÇÜRÜK

In the Turkish tax legislation, tax fines are considered as non-deductible expenses. As it is case for all non-deductible expenses, different accounting methods can be used for reflecting tax fines in accounting records and selected methods would alter the financial statements provided to tax offices by the companies.

Tax fines are considered as withdrawn and debiting capital or owner's receivable accounts are the alternative methods to be used in reflecting tax fines by companies applying tax accounting. Companies applying GAAP add-up tax fines to the profit before tax in converting income statements provided tax office for income or corporate taxation. That is, taxable profit is determined by adding non-deductible expenses to accounting profit and any correction entries aren't made. As of today, this is the common approach applied by most companies in Turkey.

However, correction entries as regards to tax fines are needed for consistencies in accounting records and financial statements. These entries may also affect accounting records related to revenue, expense or assets at times. In this study, accounting methods for non-deductible expenses specific to tax fines are examined to identify the best alternative methods to be used in reflecting the tax fines on accounts.

In this research, a case study based on single tax audit report was run to assess the adequate accounting process of tax fines. The results of the study suggest that ''due to the significant differences in accounting based on GAAP and tax regulation'' those companies applying merely GAAP may face additional tax fines when the company is audited by tax inspectors. The results of the study also suggest that applying the tax accounting as an alternative to applying GAAP, which requires re-adjusting the profit before tax as amount equal to tax fine, would be better alternative in reflecting the tax fines on accounts.

Keywords: Tax Fines, Accounting, Tax Audit Report Jel Codes: M40, M41, M42

19-BV12-6226

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PUBLIC PRIVATE PARTNERSHIP IN DEVELOPING COUNTRIES: THE COMBINATION USE OF PUBLIC FINANCE AND DOMESTIC PRIVATE INVESTMENT DEBT

MR. LUSEKELO MWAKAPALA[15] AND DR. SUN BAIQING

The demand for financing for infrastructure for developing countries is very high and most of these infrastructures are Greenfield that has high operation cost, risk (political) and skeptics from investors due to its uncertainty. Developing industries is very difficult due to lack of reliable power supply to industries as well as population, also poor transportation system for raw material or goods to the market. Millions of people are living at very poor sanitation environment and need for clean water is rampant. Sewage systems are destroyed during rainy season and flooding occurrence is normal in big cities even with a normal rainfall due to poor sewage systems and un maintained infrastructures. In developing countries most of the projects lack financing apart from the fact that they will increase social value but they attract low investors due to its costly, high financial risk (revenue assumption) and political risk especial leadership changes and policies.

Public private partnership has been utilized by many developed countries and World Bank advocacy to developing countries has a very slow movement especially in Sub Saharan Africa where its applications have been least for past 10 years. There is a need to have a model or framework that will help the initial growth of PPP and infrastructure. Since the most of the project are not bankable, less commercial value due to low population against high financing cost and high risk thus low attraction to investor. Our study aim to assess the possibility of using combination of domestic private finances through debt and public financing on the other side since the government can contribute to the investment and has been doing so for years. Stimulating the domestic finance the government may opt to share investment cost but transferring the risk to the private partner since in project finance long term debt allows a variation of up to 70% of the total funding equipment. So the government investment into a project will also reduce the cost of equity at the same time making the project bankable since its involvement is a good guarantee for financial institution and other stakeholder to get interested. Our study will adopt a model from Estache, Serebrisky and Wren-Lewis (2015) assumption 4 (Benevolent Government) where circumstance can allow the use of combination of public finance, private debt and private equity so we did some modification by improving monitoring, bankability and lowing cost of debt by using domestic instead of international finance.

21-BM22-6644

CASE STUDY AND DOCUMENTATION REPORT ON SANGWARI KHABARIYA- A TOOL FOR COMMUNITY DEVELOPMENT AND ADMINISTRATIVE EFFICIENCY

MS. SUDARSHINI NATH[16]; AND SHIKHAR SHRIVASTAVA

'Sangwari Khabariya' being a collective of child and adolescent reporters at the village-level, have been empowered to report, document, disseminate, and monitor various activities related to health, nutrition, education, water and sanitation and enter into a dialogue with the community & the local administration. A community of children who had previously been school drop outs and orphans has been trained in hilltop Sarguja District of Chhattisgarh, India. Sarguja is a tribal dominated district in north of Chhattisgarh which consists largely of

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primitive tribes including Pando and Korwa, who live in the forest. The Pando tribe believes themselves to be members of the "Pandav" clan and the Korwa are descendents of the "Kauravs", both mentioned in the Hindu epic Mahabharata, a world famous Indian literature dating back 5000 years. A young community of tribal adolescents have been indentified and trained into rural journalism covering camera handling, interview organization, video editing and sensitization on issues that plague the world today. The project has been identified as 'Sangawari' which loosely translates into 'friendly neighborhood reporter' in the local dialect. These children are locally involved in identifying issues that are ignored by the administration. They are local kids who are also stakeholders of village misfortunes. They record a series of videos covering problems, community discourses, conduct interviews of village headman and other stakeholders like themselves. The video is then edited and crafted with English subtitles and are uploaded on a Youtube channel. The channel is subscribed by the local administration, Municipal Corporation, District Magistrate and Block officers. These documented miseries are thus rapidly taken into cognizance by concerned departments.

The project has been a success in Sarguja District with more than two thousand subscribers and fifty video uploads. Children who have been a part of the project are recognized as 'CAMP'- Children as Media Producers who belong to the most backward community, in the most vulnerable district where even basic necessities like permanent shelters and television sets are worldly luxuries.

This paper covers insights on problems pertaining to India's rural and tribal populations. It's a showcase of Sangawari Khabariya's ground work and includes identified issues of the United Nations Sustainable Development Goals - education, right to nutritious food, shelter, safe drinking water and child rights among others with landmark case studies. It covers field scoping reports from child marriage to inaccessible drinking water, from gender disparity to exploitation of daily laborers. The study is based on primary field work and owes credit to a month long interaction with Sangwari Khabariya at the district. It further highlights the importance of digital innovation, community development and technological interventions in policy and governance.

Keywords: Sangwari Khabariya, Policy and Governance, Community Development, Education, Technological Interventions, SDGs, Youtube, Tribal and Rural Development, Technological Interventions, Administrative Efficiency.

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FIVE-DAY SOLUTION AND RE-TAKEOFF OF ENGLAND: AN ANALYSIS OF HISTORIC AND LATEST RESEARCHED VERSIONS

DR. SYED AFTAB ALAM[17]

Knowledge has two origins, Divine and Human Experienced. The both sources proved that teaching is the most first and crucial position in any society even beyond the boundaries of time and space. The article presents an analysis of Greek, Muslim and English history, which is openly evident that teachers were placed at the highest place among all professions and ultimately they got impacts of their highness which fetched their nations toward the golden periods of their history. In the same lineup, there are multiple current researches by American, French and English professors, which also concluded that the status of teachers in developed countries is better than the status of teachers in developing countries. On the same parameters,

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countries at the world developing chart can be judged as higher as the country grant the higher status to its teachers. Concluding that developed countries and climbing nations is as better as their level of progress and development comparatively than other nations of the world.

Current researches exposed that England is posing to give a grand status to its teachers. It is not actually granting the highest status, importance and free hand for research to its teachers among their communities as it granted in its past of golden era. It is the time to study the core line of educational system of England and suggest a base for its re-take off.

A philosophical based of Teacher's Policy in Great England has been developed, to present in this conference, started from the issuance of Queen's Order to grass root level implementation procedure. Implementation of New Teacher's Policy and its counterparts with recommendation of smooth execution through Media campaigns, respective teachers' status public orders, execution by all dignitaries of society with a connection to masses, removal tactics of snobs and procedure for effective availability of project funds for teachers' research are the main features of the policy. In short, this article presents a result oriented base for 5-day work plan for towering the teachers' status which can become an assured take off of England for re-holding the governance of the world.

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