

2017



International Conference on Interdisciplinary Social Science Studies

ICISSS 2017 (Boston) Conference Proceedings



ISBN: 978-1-911185-23-9 (Online)

FLE Learning



International Conference on Interdisciplinary Social Science Studies
ICISSS 2017 (Boston) Conference Proceedings
24th-26th April 2017

General Editor: Dr. Ramandeep Kaur Chhina

Associate Editor(s): Prof. Dr. Abdul Ghafur Hamid, Dr Avnita Lakhani, Dr Monika WIECZOREK-KOSMALA, Dr. Indianna Minto-Coy, Dr. Nitin Upadhyay, Dr. Poomintr Sooksripaisarnkit, Dr. Rajesh Sharma, Dr. Zhixiong Liao, Dr. Zinatul Zainol, Ms. Florence Simbiri-Jaoko, Ms. Mercy Khaute, Prof. Tshepo Herbert Mongalo, Dr. Joanna Błach, Miss. Kate Masih

Copyright © 2017 FLE Learning Ltd All rights reserved. No part of this publication may be reproduced or transmitted in any form, or by any means, or stored in any retrieval system of any nature without the prior permission of the publishers.

Permitted fair dealing under the Copyright, Designs and Patents Act 1988, or in accordance with the terms of a licence issued by the Copyright Licensing Agency in respect of photocopying and/or reprographic reproduction is excepted.

Any application for permission for other use of copyright material including permission to reproduce extracts in other published works must be made to the publishers and in the event of such permission being granted full acknowledgement of author, publisher and source must be given.

Disclaimer

Whilst every effort has been made to ensure that the information contained in this publication is correct, neither the editors and contributors nor FLE Learning accept any responsibility for any errors or omissions, quality, accuracy and currency of the information, nor any consequences that may result. FLE Learning takes no responsibility for the accuracy of URLs of external websites given in this publication nor for the accuracy or relevance of their content. The opinions, advices and information contained in this publication do not necessarily reflect the views or policies of the FLE Learning.

Format for citing papers

Author surname, initial(s). (2017). Title of paper. In Conference Proceedings of the International Conference on Inter-disciplinary Social Science Studies, (pp. xx-xx). Boston, April 24th-26th, 2017.

ICISSS © 2017 FLE Learning Ltd
ISBN: 978-1-911185-23-9 (Online)

These proceedings have been published by the FLE Learning Ltd trading as FLE Learning.
T: 0044 131 463 7007 F: 0044 131 608 0239 E: submit@flelearning.co.uk W: www.flelearning.co.uk

TABLE OF CONTENTS

INCLUSIVE AND SUSTAINABLE ECONOMIC DEVELOPMENT: A SUCCESS MODEL OF HIMACHAL PRADESH STATE IN INDIA.....	5
Dr. Abhishek Jain	5
THE EFFECTIVE ROLE OF COOPERATIVES AND THE NEED FOR ISLAMIC COOPERATIVES IN PAKISTAN: A CRITICAL STUDY OF PUNJAB PROVINCE.....	17
Sanauallah Ansari	17
OCCUPATIONAL HEALTH HAZARDS FACED BY WOMEN BANGLE WORKERS: A CASE OF HYDERABAD, SINDH PAKISTAN.....	25
Professor Dr. Misbah Bibi Qureshi	25
LAW AS AN ENABLING DEVICE.....	35
ANTONIOS E. PLATSAS	35
HITTING THE ROAD: A CRITICAL EVALUATION OF THE RELATIONSHIP BETWEEN (AUTO)MOBILITY AND GENDER ROLES IN ECE TEMELKURAN'S TURKISH NOVEL <i>WOMEN WHO BLOW ON KNOTS</i>	44
Sidal Oner	44
COMBATTING PIRATED VCDS/DVDS IN BATAM CITY, INDONESIA: "FACTS AND EXPECTATIONS"	51
Elza Syarief and Rina Shahriyani Shahrullah.....	51
CEDAW RESERVATIONS WITH REFERENCE TO SHARIA	61
Simran Parikh	61
CURRENCY VALUE STABILITY IN ISLAMIC MONETARY SYSTEM*	70
Prof. Dr. Kamal Hattab.....	70
HIGH SPEED RAILWAY JAKARTA-BANDUNG AS ECONOMIC BELT INITIATIVE: ANALYSIS OF CHINA'S FOREIGN POLICY IN INDONESIA.....	79
Fadlan Muzakki.....	79
INDIVIDUAL PSYCHOLOGICAL CHANGE IN A MASS MEDIA SOCIETY.....	90

Dr. Tijana Mandic and Dr. Divna Vuksanovic.....90

**THE REFUGEE CRISIS: REEVALUATING THE ROLE OF THE STATE IN
TRANSNATIONAL MIGRATION CONTROL..... 91**

Dr. Sieglinde Pommer91

**WOMEN IN POLITICS: FOX NEWS INFLUENCE ON VIEWER'S PERCEPTION OF
HILLARY CLINTON?..... 91**

Ms. Leah Walsh.....91

**REMAKING A CULTURAL MODE OF SCRIPTURE-DISSEMINATING: A CASE OF
BUDDHIST CULTIVATION FROM TZU CHI SECT IN CONTEMPORARY TAIWAN..... 92**

Mr. Kai-wen Cheng92

HOW EXPERIENTIAL LEARNING ENHANCES EDUCATION IN POLITICAL SCIENCE . 93

Mr. Christian Colon.....93

**EXTENT OF CONTRIBUTIONS OF MORTGAGE BANKS IN THE PROVISION OF
HOUSING LOAN SCHEME FOR ECONOMIC DEVELOPMENT IN ENUGU METROPOLIS
..... 93**

Ms. Nneoma Osakwe Prof. Mellitus Ezeamenyi94

EVIDENCE FROM THE ENTREPRENEURIAL ACTIVITY AT THE NATIONAL LEVEL .. 94

Mr. Changhyeon Song.....94

**WRITING PRACTICES AND THE IMPACT ON COLLEGE AND CAREER READINESS
AND SOCIAL WELFARE 95**

Ms. Latoya McInnis.....95

Mr. Oudom Tem96

02-CA23-1139

INCLUSIVE AND SUSTAINABLE ECONOMIC DEVELOPMENT: A SUCCESS MODEL OF HIMACHAL PRADESH STATE IN INDIA

DR. ABHISHEK JAIN¹

ABSTRACT

Himachal Pradesh (HP) is a hill state in India with 6.8 million population. Within short span of time, HP has catapulted itself into a model of inclusive and sustainable development. This paper analyses the development model of HP through empirical study for the period 1991-2014, and explores the factors behind its success. Additionally, the state of governance in HP is assessed based on primary data. The findings show that HP has achieved high level of inclusive economic development, and its Index of Inclusive Economic Development jumped from 0.31 in the year 1991 to 0.82 in 2014. Governance in HP is good. The trinity of HP's development model are human development, development-oriented governance and social inclusion. HP's successful model has wider implications for nations, especially in the developing world, to achieve inclusive development in the shortest possible time.

KEYWORDS: Himachal Pradesh, Inclusive Development, Governance, Human Development, Index of Inclusive Economic Development.

"We are often asked: what does social inclusion and sustainable development look like?" While the question really doesn't have a clear answer, because it is so context-specific, we use Himachal Pradesh as something of a benchmark. This small Himalayan state in India stands apart in advancing sustainable green growth as well as social inclusion."

- World Bank (2015, p. vi)

This paper aims to discuss the inclusive and sustainable development model of Himachal Pradesh state of India for drawing wider policy lessons. I start with a brief profile of HP in Section 1. A review of literature is done in Section 2. The research methodology for the present study is given in Section 3, followed by the main findings in Section 4. Section 5 highlights the factors behind the success of the development model of HP. The policy lessons derived from HP model of development are given in Section 6. The paper ends with looking ahead and further points of research. The paper is based on my doctoral research on the above topic (Jain, 2016a) and encompasses my field-level insights on development and governance as an Indian Administrative Service Officer having worked at policy formulation and implementation levels in HP for the last fifteen years.

Inclusive development reflects a pattern where all sections of society, regions and strata of people enjoy the fruits of development and are its active partners. Inclusive development is expected to reduce poverty faster by having higher elasticity of poverty reduction (Jain, 2016b). It includes growth and development, inclusion and inter-generational equity and sustainability (World Economic Forum, 2017, p. 9). Inclusive and sustainable development reflects the aspirations of nation states across the world.

¹ Indian Administrative Service Officer in Government of Himachal Pradesh, India. Presently: Fellow, MIDP, Sanford School of Public Policy, Duke University, Durham, US. flyingfinger3@gmail.com. The ideas expressed are the personal opinion of the author, and not of the government.

BRIEF PROFILE OF HIMACHAL PRADESH

Himachal Pradesh is a hill state in north India. Select socio-economic indicators of HP are given in Table 1. HP has 1.7 per cent of total area of India and 6.8 million population (0.57 per cent of India). It is a predominantly rural state with 90 per cent of its population living in villages. HP became a Union Territory in 1948, and a full-fledged State in 1971. It is a deep-rooted democracy, having democratic institutions from state to village levels. There are three-tier Local Self-Government institutions both in rural and urban areas (numbering around 3400), which have 50 per cent reservation for women and 33 per cent for Scheduled Castes and Scheduled Tribes. The governments in HP change smoothly by way of elections periodically. There is a balance among the various organs of the State - Legislature, Executive and Judiciary.

Table 1: Himachal Pradesh – Select Socio-Economic Indicators

Area	55,673 sq.km.
Population (2011)	6.8 million
Year of formation of state	1971
Density (per sq.km.) (2011)	123
Form of government	Democracy
Total villages	20,690
GDP (2015-16 at constant prices) (Base 2011-12)	Rs.962.89 billion (approx. \$15 billion)
GDP per capita (at current prices in Rs.) (2016)	Rs.135,621
GDP per capita (2009 in PPP terms)	\$3781
Share of primary, secondary and tertiary sectors in GDP	19.7%, 38.3% and 41.9% respectively
Sex ratio per 1000 males (2011)	972 (against 943 for India)
Literacy rate (2011)	82.8% (against 74% for India)
Life expectancy at birth (2006-10)	72.4 (Female), 67.7 (Male)
Forest cover (%age of total land)	66%
Total villages electrified	100%

Sources: Census of India (2011), GoHP (2017), GoI (2016), The Economist (2016), CSO (2017)

HP has transformed within one generation (around 40 years) from a poor backward hill state to a socio-economically prosperous state. HP has been acclaimed for its socio-economic development by institutions like World Bank (World Bank, 2007, 2015, 2016) and economists like Amartya Sen (Sen, 1999, 2015; Sen and Dreze, 2002, 2013). In HP, no local person is a beggar, no one sleeps on the road, every house has electricity (even in remotest tribal village), and every village has telecom connectivity – no mean achievements seen from developing countries' perspective.

REVIEW OF LITERATURE

Two World Bank Reports (2015; 2016) state that Himachal Pradesh has the reputation of being a stable, inclusive, cohesive and well-governed state. As per World Bank (2015, p. xiii), the state has achieved rapid economic growth and has some of the best human development indicators in the country. HP stands apart from many states of India with its strong track record of social inclusion and sustainable development. It has made remarkable progress in reducing poverty, delivering services and maintaining low levels of caste, tribe and gender- based disparities. It has taken concrete steps toward 'green growth' and is moving towards carbon neutrality by the year 2020 (World Bank, 2016). Nobel-laureate economist Amartya Sen in his various works, has hailed the growth model of HP. Sen (2015) describes how HP has made rapid and notable progress in different socio-economic dimensions especially education, and how the governance model of HP holds lessons for other states in India. Indian Human Development Report (2011) ranked HP third among Indian states in human development. Government of HP (2014) holds that HP has achieved most of the Millennium Development

Goals by the year 2014, and aims to achieve Sustainable Development Goals by the year 2022 much before the target of 2030. Radhakrishna (2015) compares the various states of India in terms of progress in reduction of multi-dimensional deprivations. In this study, HP is ranked first in India on the index involving reduction in income poverty, decline in malnutrition, and improvements in education during the period 1993 to 2010. Mundle et al., (2016) in their study find that HP ranks among top six states of India in economic freedom and policy effectiveness, but ranks poorly in ease of doing business and competitiveness.

RESEARCH METHODOLOGY

Objectives: The present study has been conducted with the following four objectives: First, to analyse the pattern and extent of inclusive economic development in HP, and the variations in it during the post-reform period of 1991-2014. Second, to assess the state of economic governance in different sectors of the economy of HP. Third, to explore the factors behind HP model of development, and fourth, to find out wider policy lessons.

Scope: The performance of various components of inclusive economic development in HP has been seen over a period of time. State of governance has been assessed in all the three sectors of economy – primary, secondary and tertiary – of HP based on perception/experience based responses of the actual ‘recipients’ of governance – farmers and horticulturists in primary sector, industrialists in secondary sector and service enterprises in tertiary sector.

Period of Study and Sources of Data: The period of study is 1991-2014. The assessment of inclusive economic development in HP through formulation of its Index has been done for the post-1991 period at four points of time, i.e. year 1991, 2001, 2011 and 2014 based on Secondary data. The state of economic governance in HP has been studied for one period i.e. the year 2014-15 based on primary data.

Formulation of Index of Inclusive Economic Development and Index of Governance: An Index of inclusive economic development for HP has been formulated based on eight indicators - growth rate, inverse of poverty, inverse of rural poverty, literacy rates, sex ratio, child sex ratio, inverse of infant mortality rate and households with access to safe drinking water. The main reason why the above eight indicators have been taken, is the non-availability of data for similar periods for various indicators. All these eight indicators have been given equal weights as it has been assumed that none of them has over-riding importance in increasing the pace and inclusiveness of economic development. Maximum value of the index is 1 and minimum is 0. To arrive at the Index, the technique of aggregation and normalization has been used. The normalized values of the eight indicators have been taken as:

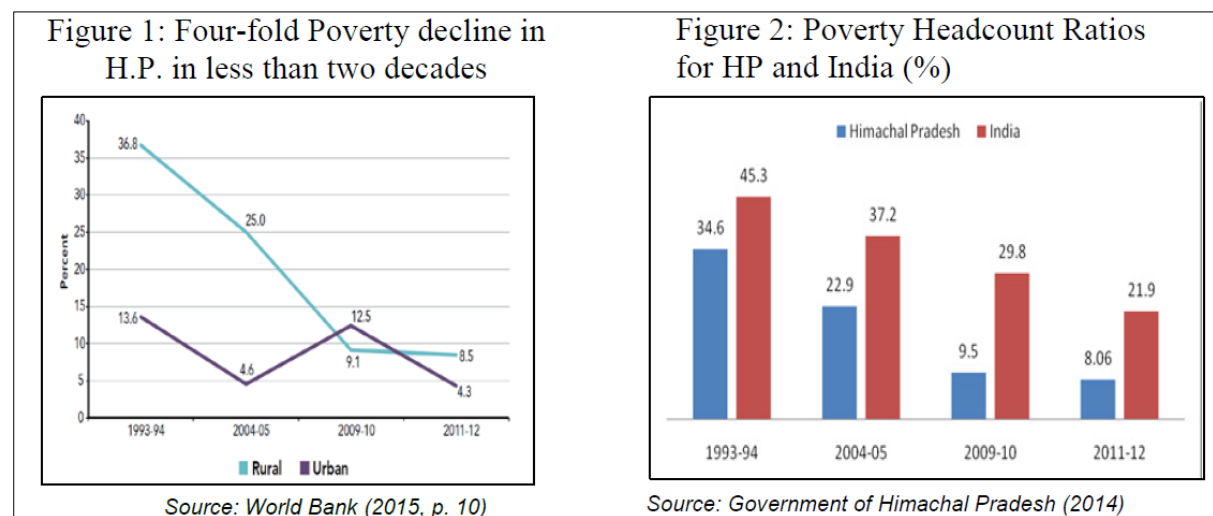
$$I_x = \frac{X - X_{\min}}{X_{\max} - X_{\min}}$$

Based on primary data, the governance in HP has been assessed for primary, secondary and tertiary sectors using 22, 21 and 11 indicators respectively. Overall governance index for HP has been computed by assigning weights to the three sectors (primary, secondary, tertiary) in proportion to their respective contributions to the state GDP.

Utility of the Study: This study is inter-disciplinary in nature, involving development economics, institutional economics and development administration. The study is useful for policy makers, development practitioners, academicians and researchers.

FINDINGS OF THE STUDY – INCLUSIVE DEVELOPMENT IN HIMACHAL PRADESH

HP faces various constraints like mountainous terrain, geographical remoteness from other Indian states, and small size and population - all increasing production and transportation costs. Yet, HP has achieved inclusive and sustainable development. Starting from economic growth, during the last ten years, HP has achieved growth rate of 7.7 per cent (Jain, 2016a) and compound growth rate of 15.47 per cent during 2006-07 to 2015-16 (CAG, 2016, p. 1). Beyond growth, the state has removed widespread deprivations. It has achieved four-fold decline in poverty within two decades (Figure 1) to 8.06 per cent as compared to India's 21.9 per cent (Figure 2). Poverty decline has benefitted all social groups. Since the purpose of growth is to reduce deprivations of the people especially the poverty levels, this achievement of HP is commendable. Moreover, the state has maintained a degree of equality – across income, caste, tribe and gender (World Bank, 2015, p. v). HP has 0.79 Human Development Index (in the year 2010) which is among the highest in Indian states (IIPA, 2012, p. 84).



Especially in education and health, HP has achieved substantial progress. At the time of India's independence, HP's literacy rate was similar to Bihar and Uttar Pradesh - two of India's poorest states. Now it is 82.8 per cent against 74 per cent in India (Census 2011). As per Annual Status of Education Report, HP secured first rank in achieving learning outcomes in basic reading and mathematics across rural India (Pratham, 2017). Health Index of HP is 0.72 as compared to 0.56 for India (GoI, 2015). Women labour participation rate in HP (63%) is second highest in India. State has achieved near universal coverage in sanitation, child immunization, access to electricity, drinking water (GoHP, 2014).

The State has adopted several measures for achieving sustainable development. It has vowed to become "carbon neutral" by 2020; it is the first state in India to have banned the use of plastic bags; uses plastics for road construction; and climate and environmental preservation appear to be collective responsibilities of the state and its citizens (World Bank 2015a, p. 1-2). In the Environmental Sustainability Index (2011) HP ranks in the top category of 'Most Environmental Sustainability States' (IFMR, 2011), and has forest cover of 67 per cent of total area of the state. Government of HP has complemented its macro vision with a variety of policies, rules and acts of environmental sustainability, which suggests a culture immersed in environmental awareness and preservation, as well as sensitivity to lingering citizen concerns about the new growth trajectory (World Bank, 2016).

HP ranked as the 'Best State of India' during the decade 2003-2012 based on 'State of the States 2013' report from India Today magazine (India Today, 2014). The state achieved

almost all Millennium Development targets by the year 2014 (GoHP, 2014) and aims to achieve the Sustainable Development Goals by 2022 – much before the target of 2030 (GoHP, 2016). The performance of HP in terms of various indicators of inclusive economic development at different points of time is given in Table 2.

Table 2: Performance of HP in sub-components of inclusive development (1991-2014)

Year	Growth rate	Inverse of Poverty	Inverse of Rural Poverty	Literacy	Sex Ratio	Child Sex Ratio	Inverse of Infant mortality rate	Rural Households with access to drinking water
1991	0.6	61.3	58.3	63.8	976	951	925	75.5
2001	6.4	76.4	74.3	76.4	968	896	946	87.5
2011	7.7	91.9	91.5	82.8	972	906	962	93.5
2014	6.8	96.1	95.1	90.2	987	891	968	96.5

Source: Jain (2016a, p.150)

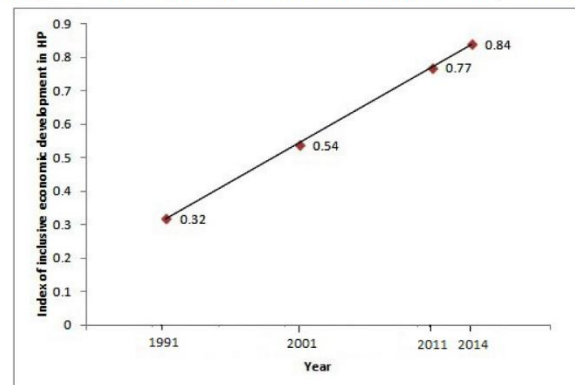
Index of Inclusive Economic Development in Himachal Pradesh

The Index of Inclusive Economic Development in HP has risen more than two and a half times in just over decades, from 0.32 in the year 1991 to 0.84 in the year 2014 (Figure 3). The growth in the index is continuous since 1991. It reflects the outcome of the development model the state has been following.

Governance in Himachal Pradesh

The overall economic governance index in HP was found to be 0.634. Sector-wise, the governance was highest in secondary sector followed by tertiary and primary sectors. One way ANOVA was found to be statistical significant ($F=37.521$, $p=0.0001$). Governance was significantly different in the different sectors of economy (primary, secondary and tertiary). Multiple comparison Post hoc Test (Least Significant Difference test) after one way ANOVA was statistically significant (Table 3). It shows that governance in primary sector is significantly associated with the governance in service sector and in industry sector.

Figure 3: Index of Inclusive Economic Development in HP (1991-2014)



Source: Jain (2016, p. 151)

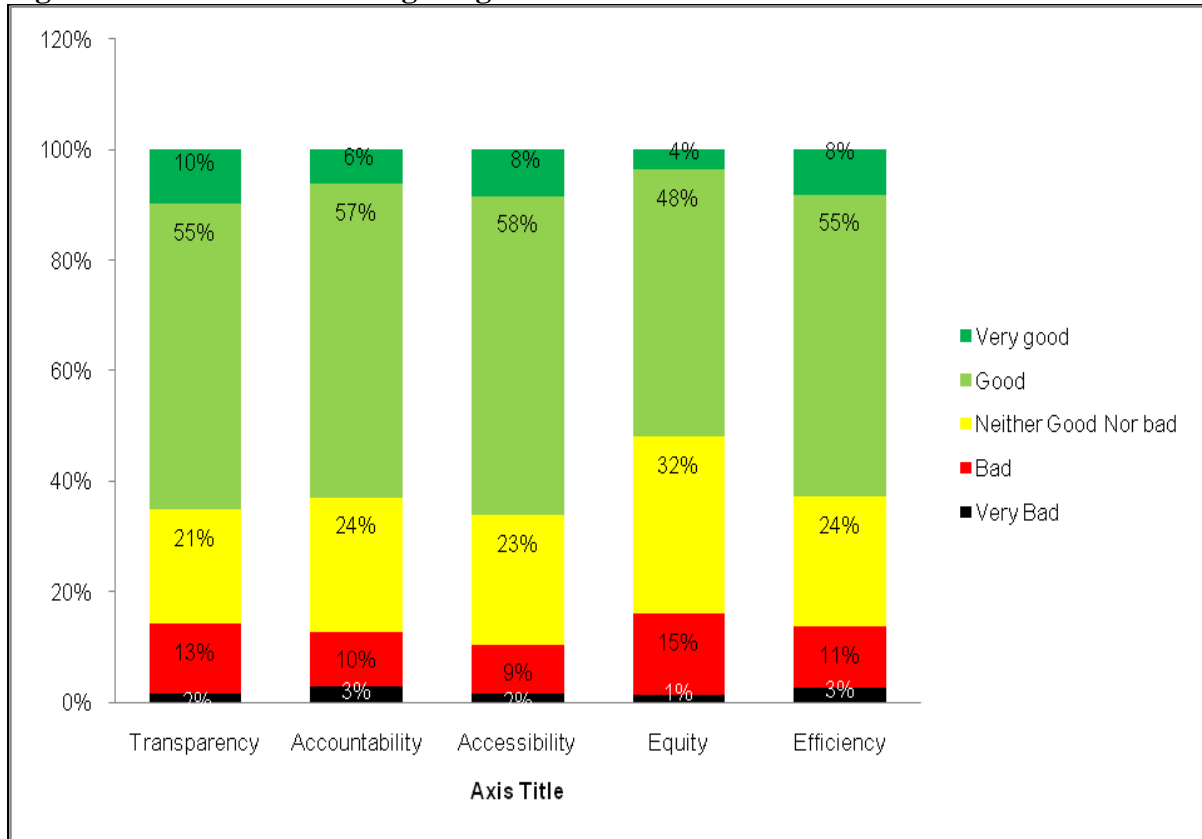
Table 3: Multiple Comparisons Post hoc Test (Least Significant Difference Test)

(I) Sector	(J) Sector	Mean Difference (I-J)	Std. Error	p-value	95 per cent Confidence Interval	
					Lower Bound	Upper Bound
Primary Sector	Services Sector	-0.12239*	.01665	.000**	-.1551	-.0897
	Industrial Sector	-0.13852*	.01665	.000**	-.1712	-.1058
Services Sector	Industrial Sector	-0.01613	.01360	.236ns	-.0428	.0106

Source: Jain (2016a, p. 227)

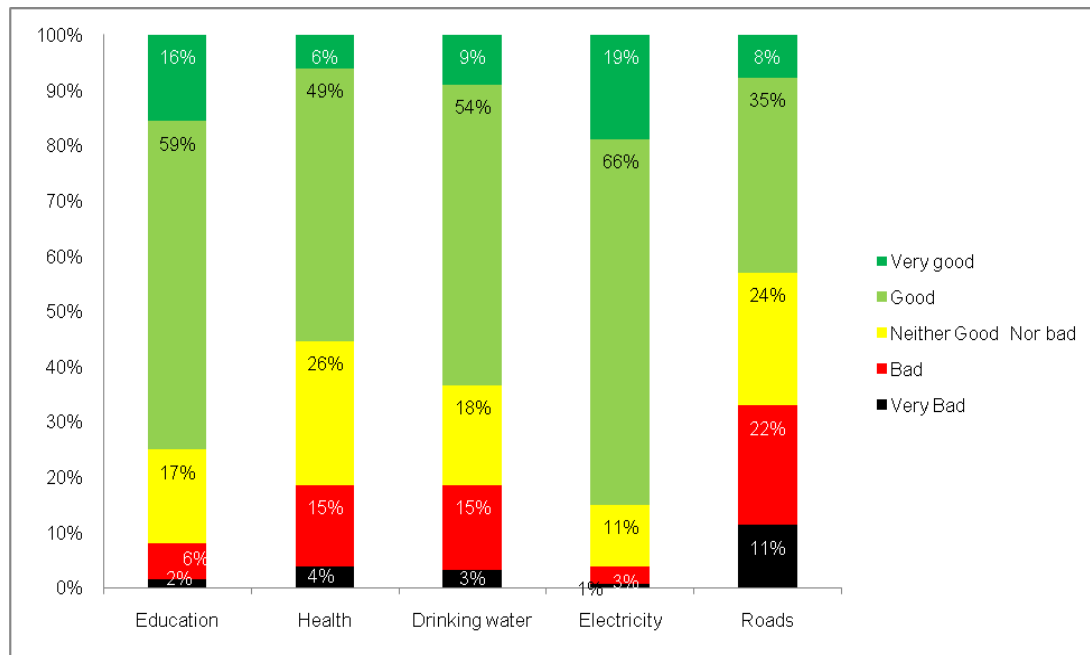
The study shows that the different facets of good governance – transparency, accountability, accessibility, efficiency and equity - are achieved in HP with few respondents terming them as bad (Figure 4).

Figure 4: Different facets of good governance in Himachal Pradesh



Source: Jain (2016a, p. 223)

Figure 5 reflects the rating of public services in HP. It reflects satisfactory level of public services by and large, though in roads there is scope for improvement. (This is also due to HP’s hill terrain necessitating continuous creation and maintenance of roads in view of rains and snow).

Figure 5: Rating of public services in Himachal Pradesh

Source: Jain (2016a, p. 224)

My above results of good development and governance outcomes of HP are by and large, in consonance with the literature mentioned in Section 2. The 0.634 index of economic governance in the present study should be seen in the context of typically high expectations of citizens of HP from the government even for things which should not be in government's domain. Additionally, certain other studies observe good governance in HP in many dimensions. HP is a deep-rooted democracy upto village levels (GoHP, 2017). The state gets the highest ranking in governance and political stability in N-SIPI Survey (NCAER, 2016, p. 40). In Economic Freedom Index, HP stands at 4th position in India (Debroy et.al., 2013). In India Corruption Survey (2005) conducted by Transparency International India and Center for Media Studies, HP is the second least corrupt state in India (IIPA, 2013, p. 90). However, in terms of ease of doing business and competitiveness, HP ranks low (Mundle et.al., 2016; Tan and Rao, 2015). A reason for this is that HP has never been an industrialised state; and in real sense of the term, industrialisation started in HP just over one decade with the grant of Industrial Package to the state; and the state is still learning the nuances of improving the ease of doing business and competitiveness with big states of India like Gujarat, Maharashtra etc.

Moreover, in the present study, a high, positive and statistically significant relationship between economic governance and economic development has been found in HP ($r=0.89$), indicating that governance and development are mutually associated in a big way.

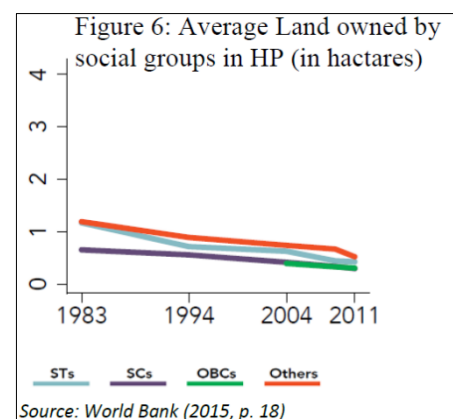
FACTORS BEHIND DEVELOPMENT MODEL OF HIMACHAL PRADESH

HP has achieved considerable success in inclusive development. The state has used natural resources as the growth engines of the state viz. hydro-power, tourism, horticulture, supplemented by recent thrust to industries. More than its achievements, it is important to understand what are the factors behind success of HP in its path towards inclusive and sustainable development. Below I mention some of them –

- **Development-oriented Governance:** HP has traditionally followed development-oriented governance. There has been commitment on the part of the State, complemented with progressive policies. HP has democratic governance, where hierarchies are intact, but

citizens have both voice and leverage. The political governments have traditionally been benevolent, accountable, transparent and people-friendly. Reasonable credit has to be given to the political class – irrespective of party – in the success of HP, who used development as a key paradigm of politics. By and large, the politicians do not indulge in caste or religion based politics in HP. The politicians even upto the level of Chief Minister, are easily accessible – unlike many other Indian states. This accessibility makes governance lot more responsive and transparent. HP fulfils all the three drivers of effectiveness – commitment, coordination, and cooperation as identified by the World Development Report (2017) for development.

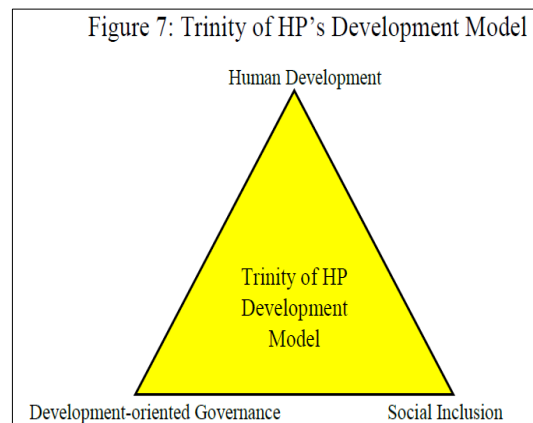
- Focus on Human Development:** The state has consistently focussed upon human development as highly valued development objectives. In education and health, the state has led from the front. Contrasting HP with many other states in India or elsewhere, the quality of public institutions in education and health is quite good. In education, for instance, more than Rs.10 million (equivalent to \$160,000) are being spent just for a science lab in a high school. There are public schools having area bigger than some private universities. The primary health care is quite good. All these are incomparable to many other states in India, where private institutions dominate in access and quality – with high costs. Focus on human development has created a solid foundation for HP’s development model to grow higher.
- Social Inclusion:** HP has ensured ‘development with dignity’ of various social groups in HP. The state was conscious of potential caste divisions, and it wanted to ensure that equality and cohesion, not just poverty reduction, are its priorities. Government of HP allocates special funds and implements a range of rural programmes for the development of Scheduled Castes, Scheduled Tribes, minorities etc. (Parmar, 1992). The SC in HP (25.2%) number higher than the national average (19%) (GoHP, 2017). Unlike other states, SCs in HP have land and have benefitted from the rapid decline in poverty. Their numerical strength, access to land, and their inclusion in HP’s social and economic development have lowered the chances of caste-based assertion or social conflicts.
- Land Reforms:** Given the importance of land in an agrarian society with natural constraints on land use, the policy makers in HP implemented land reforms early in the development process beginning 1970s. Land reforms in HP have ensured that 80 per cent of its people possess land. The distribution of land across social groups is more equal in HP (Figure 6) compared to many states in India.
- Functioning Institutions:** Acemoglu (2013) and others highlight the importance of inclusive institutions in development of a nation. The institutions have been functioning well in HP. The ‘schooling revolution’ in HP was based on a policy of universal provision of government schools. HP has a well-functioning Public Distribution System (World Bank, 2015). HP has shown that focusing on outcomes on the ground is more important than the outlay (Bhandari, 2009). Many of the essential services have not only been universal but also free. The rural development schemes have been implemented across the length and breadth of the state. The heroes in these successful efforts have been public institutions - functioning schools, health centres, government offices, Gram Panchayats and cooperatives.
- Gender Mainstreaming:** A large credit for the inclusive development in HP should be given to women who have traditionally played a strong and supportive role. The role of



women has always been strong in hill states. Women labour participation rate in HP (63%) is second highest in India (27%) (World Bank, 2015). Women in HP are active participants in development process, leading from the front. A substantial proportion of respondents in the present study (81 per cent) feel that government pays attention towards women in development and governance processes in HP.

POLICY LESSONS FROM HIMACHAL PRADESH'S MODEL OF DEVELOPMENT

Figure 7 shows the trinity of HP's development model – human development, development-oriented governance and social inclusion. In debates among economists about development models in India, there is Growth (represented by Gujarat) and Human development model (Kerala and HP). HP represents a model of rural area-led development similar to PURA Model – Providing Urban Amenities in Rural Areas (Kalam and Pillai, 2004) since 90 per cent of HP is rural. Sen (2013) writes that HP, Kerala and Tamil Nadu are all states that were very poor not so long ago (say in the 1950s and 1960s) - unlike Punjab and Haryana, which have been relatively prosperous regions of India for a long time. Within forty years or so, HP has made the transition from severe social backwardness and deprivation to a relatively advanced state (World Bank 2015a, p. 78-79). Agreed that the HP model is not perfect and has scope for improvement, yet it does not belittle its achievements.



The main lessons emerging from the HP model of development are summarised below:

- Inclusive development can be achieved despite several constraints. Further, the pace of inclusive development can be increased substantially within a short span of time.
- Poverty can be reduced within one generation.
- Focus on human development yields large-scale and long-term benefits.
- Development-oriented governance is feasible, even politically.
- State can be the foremost propeller of inclusive and sustainable development.
- Inclusive development can be achieved in a predominantly rural set-up.
- Social inclusion is possible despite large population of traditionally excluded groups.
- Well-functioning institutions propel the whole development process.
- Basic infrastructure can be made available to citizens with equity in access, despite challenging geographical circumstances.

LOOKING AHEAD AND CHALLENGES IN THE MODEL

It is expected that the basic tenets of the HP model – development-oriented governance, human development and social inclusion – are not likely to change in the near future. The successive governments have been following this pattern of development, and there is no major reason why they should discontinue treading further on this path. Similarly, accessibility, transparency and accountability in governance are likely to remain high in HP. Given HP's track record of inclusive development, there is a strong chance that the future will be a reflection of the past (World Bank, 2015).

The current study finds that despite successes, HP model of development has grey areas and challenges too. This include sustaining inclusive and sustainable development in a fiscally constrained situation of the state, growing environmental fragilities arising out of exploitation of natural resources, transitioning from a state-led to market-led growth model, improving GDP, improving ease of doing business, tackling low child sex ratio and creating jobs for rising educated unemployed youth. Governance and infrastructure needs to improve further. New issues of social inclusion and of social exclusion may emerge as a result of Himachal Pradesh's previous successes. Because of HP's growth path, with potential externalities on the environment, governance and social relations; some of the state's past gains may be at risk of erosion. The foundations for good outcomes are likely to be tested, since reforms inevitably create winners and losers or introduce new ways of life that may disrupt the previous structures.

I suggest that HP should yield way to the private sector in driving the economy of the state, and the ease of doing business should improve. The dependence on the State for non-critical items should decline. Let markets play a more vigorous role. There should be Disinvestment/Divestment of Public Sector Units of HP involved in manufacturing, running hotels etc.; Outsourcing, Contracting-out service delivery activities; deregulation; Public Private Partnerships in Infrastructure building etc. The growth drivers – hydro-electric power, tourism, horticulture and industries – should be modernised. There is large scope of improvement in the tourism and horticulture sectors in HP. Hydro-power should be pursued in an environmentally sustainable manner. Efforts should be made to retain the industries in the state (who have started to move because of the ending of Industrial Package to HP) by focusing on infrastructure. Sunrise sectors like Information Technology, Bio-technology – which have not taken off much in HP - should be given thrust as the state has suitable conditions for these sectors. HP should learn from other Indian states like Andhra Pradesh, Karnataka etc. in this regard.

It would be interesting to conduct further research on the sustainability aspects of the growth model of HP especially in the domain of domestic resource mobilisation; and also how to transition to a situation where markets and private sector perform more role in the economy. Research on replicability issues for other states and nations would also be beneficial. Infact, HP has to go a long way and learn from others as well, while sharing its own secrets of success.

CONCLUSION

This paper discusses the inclusive and sustainable development model of HP state in India. Despite being a small hill state, HP has been a trail-blaizer in inclusive economic development, achieving four-fold decline in poverty in less than two decades. Inclusive Economic Development has increased by two and a half times in little over two decades in HP. Governance in the state supports economic development. Human development, development-oriented governance and social inclusion are the three pillars of HP's model of development. HP has few policy lessons for others. Achieving inclusive and sustainable development in any nation involves lots of challenges, but these challenges can be converted into opportunities to evolve a win-win situation for all. The sooner it is done, the better it is.

REFERENCES

- Acemoglu, D. and Robinson, J. (2012) *Why Nations Fail: The Origins of Power, Prosperity, and Poverty*. New York: Crown Business.
- Census of India (2011) *Himachal Pradesh Series 3, Part XII B*. Directorate of Census Operations, Himachal Pradesh.
- Central Statistical Organisation (2017) *State-wide Data*. [Online]. Available from: https://en.wikipedia.org/wiki/List_of_Indian_states_and_union_territories_by_GDP#cite_ref-CSO2015-16_5-14 [Accessed 17 February 2017].

- Comptroller and Auditor General of India, Government of Himachal Pradesh (2016) *Report of the Comptroller and Auditor General of India on State Finances for the year ended 31 March 2015*. [Online]. Available from: www.cag.gov.in/content/report-2016-state-finances-government-himachal-pradesh [Accessed 2 April 2017].
- Debroy, B., Bhandari L. and Aiyar, S. (2013) *Economic Freedom of the States of India 2011*. New Delhi: Academic Foundation.
- Dreze, Jean and Sen, A. (2013) *An Uncertain Glory: India and its Contradictions*. England: Allen Lane Publishers.
- India, Government of Himachal Pradesh (2014) *Millennium Development Goals: Himachal Pradesh Report*. Shimla: Department of Economics and Statistics.
- India, Government of Himachal Pradesh (2017) *Economic Survey 2016-17*. Shimla: Department of Economics and Statistics.
- India, Government of India (2013) *Raghuram Rajan Report of the Committee for Evolving a Composite Development Index of States*. New Delhi: Ministry of Finance.
- India, Government of India (2015) *Economic Survey 2014-15*. New Delhi: Young Global Publications.
- India Human Development Report (2011) *Towards Social Inclusion. Institute of Applied Manpower Research*. New Delhi: Oxford University Press.
- India Today* (2014) State of the States, 4 November.
- Indian Institute of Public Administration (2013) *India Governance Report 2012*. New Delhi: Government of India.
- Institute for Financial Management and Research (2011) *The Environmental Sustainability Index for Indian States: Informing Environmental Action*. Chennai: Centre for Development Finance.
- Jain, A. (2009) A Sector-focused Approach to achieving Employment-Intensive Growth in India – An Empirical Analysis. *The Indian Journal of Economics*, 90(356), 135-152.
- Jain, A. (2016a) *Economic Governance and Inclusive Economic Development: A Study of Himachal Pradesh*. Ph.D. Shimla: Department of Economics, Himachal Pradesh University, India.
- Jain, A. (2016b) *Perspectives and Horizons of Inclusive Economic Development and the Indian saga*. Administrator Development, Shimla: Himachal Pradesh Institute of Public Administration.
- Kalam, APJ. and Pillai, S. (2004) *Envisioning an Empowered Nation*. New Delhi: Tata McGraw-Hill Publishing Company Limited.
- Mundle, S. et al. (2016) Governance Performance of Indian States. *Economic and Political Weekly*, 51(36), 55-64.
- National Council of Applied Economic Research (2016) *The NCAER State Investment Potential Index*. New Delhi: NCAER
- Parmar, H.S. (1992) *Tribal Development in Himachal Pradesh: Policy, Programmes, and Performance*. New Delhi: Mittal Publications.
- PRATHAM (2017) *Annual Status of Education Report (Rural)*. [Online]. New Delhi. Available from: www.asercentre.org/Keywords/p/289.html [Accessed 20 March 2017].
- Radhakrishna, R. (2015) Well-being, Inequality, Poverty and Pathways Out of Poverty in India. *Economic and Political Weekly*, 50(41), 59-71.
- Sen, A. (1999) *Development as Freedom*. New York: Random House.
- Sen, A. (2015) *The Country of First Boys and Other Essays*. New York: Oxford University Press.
- Sen, A. and Jean, D. (2002) *India: Economic Development and Social Opportunity*. Oxford University Press.

- Sharma, T.R. (1999) Local Configurations and National Parties in Himachal Pradesh. *Economic and Political Weekly*, 34 (34/35), 2465-71.
- Tan, Giap, K. and Rao, K. (2015) Subnational Competitiveness Analysis and Simulation Studies for 35 States and Union Territories of India. *International Journal of Indian Culture and Business Management*, 10 (4), 476–93.
- The Economist (2011) *Comparing Indian states and territories with countries: An Indian summary*, 21 July. [Online]. Available from: <http://www.economist.com/content/indian-summary> [Accessed 5 February 2017].
- World Bank (2007) *Himachal Pradesh: Accelerating Development and Sustaining Success in a Hill State*. Poverty Reduction and Economic Management, India Country Management Unit, South Asia Region. Report No: 39810-IN. Washington, DC: World Bank Group.
- World Bank (2015) *Scaling the Heights: Social Inclusion and Sustainable Development in Himachal Pradesh*. Washington, DC: World Bank Group.
- World Bank (2016) *Himachal Pradesh: Towards Green and Inclusive Development*. Washington, DC: World Bank Group.
- World Bank (2017) *World Development Report: Governance and the Law*. Washington, DC: World Bank Group.
- World Economic Forum (2017) *The Inclusive Growth and Development Report 2017*. Geneva: World Economic Forum.

03-CA19-1001

THE EFFECTIVE ROLE OF COOPERATIVES AND THE NEED FOR ISLAMIC COOPERATIVES IN PAKISTAN: A CRITICAL STUDY OF PUNJAB PROVINCE

SANAULLAH ANSARI¹

ABSTRACT

Pakistan is a developing country, it requires massive efforts to provide better financial, educational, housing, industrial, and health facilities to the people. Among 5 provinces, Punjab is the largest populated province of the country. It is playing a leading role by establishing a large number of Cooperatives. The purpose of this study is to highlight the presence and performance of existing Cooperatives who are working on conventional financial system. Another purpose is to explore the need for Islamic Cooperatives in the country, especially in Punjab province due to the reason that a vast majority of the people are Muslim and they want to avoid from interest based financial services. In the light of the gathered information, it revealed that Apex Societies, Credit Societies, Housing Societies, Industrial Societies, Women Societies, Farming Societies, Multipurpose Societies and Education and Training Societies have established to provide maximum benefits and facilities to the members.

Key Words: Cooperatives, Islamic Cooperatives, Punjab, Pakistan

INTRODUCTION

The purpose of Cooperatives in the world is to bring the like-minded people on a common platform to solve their financial requirements and needs. The main interest of Cooperatives is focused on the establishment of such institutions which can play their vital role in the distribution and utilization of human resources and financial resources. The basic theme of Cooperatives is “One for all, all for one”.

Due to the importance of Cooperatives, these have been discussed a lot. According to Yunus, (2010), social entrepreneurship and social businesses are emerging as key to poverty reduction, the role of Cooperatives become more important. Similarly, Fonteyne and Hardy (2011) provided a full description of cooperative structures and some of the economic and welfare issues that arise. According to them, Cooperatives are the backbone of any society to provide maximum financial benefits to the community. In India-Pakistan subcontinent, Cooperatives were introduced to give protection to the poor farmers who were slaved by the rich lenders who provided money to them to fulfill their financial needs. Later, more areas were included in this category which includes housing, industry, trading and consumers stores, especially in urban areas.

History of Cooperatives in Pakistan

The idea of Cooperatives was started in India in the second half of 19th century from Madras. Several Cooperatives were established in the last part of the century by using different models including Raiffesen Credit Cooperatives and Rochdale model. To consider the problems of poor farmers, the British government enacted the First Cooperatives Law of India in 1904 which was enforceable to whole undivided India which includes Pakistan, Bangladesh and Myanmar. This law was reviewed in 1912 by covering more types of Cooperatives and giving more rights to states and provinces. To manage those Cooperatives which have members in more than one state or province, Multi-unit Cooperative Societies Act was introduced in 1942.

¹ Department of Management Sciences, Shaheed Zulfikar Ali Bhutto Institute of Science and Technology (SZABIST), Pakistan. E-mail:- sanaullahansari@hotmail.com

Right from the independence in 1947, the government of Pakistan continued the practice of Bombay and Sindh Cooperative Societies Act, 1925. This Act is still enforceable with various changes and amendments. Additionally, to cover more than one province, Multi Unit Cooperative Societies Act of 1942 and Cooperative Farming Act of 1976 were also introduced by the government. Traditionally, the movement of Cooperatives was started in Pakistan in 1950s and flourished in 1960s when millions of poor people including farmers were migrated towards Pakistan. At that time, government realized the situation and it decided to provide a platform to the people so that they can be stabilize. In the result, a number of development schemes were launched to make the allied primary societies economically viable and improve the living conditions of farmers and members.

The Punjab Province

Pakistan has 5 provinces, Punjab, Sindh, Khyber Pakhtoonkhawa, Balochistan and Gilgit Baltistan. Punjab is the largest populated province of Pakistan. Its total area is 205,344 square kilometers which is 24% of total country's area. Similarly, its current total population is 100,590,000 which is 51% of total population of Pakistan. Its capital city is Lahore and major cities are Faisalabad, Rawalpindi and Multan.

As per law, Cooperatives is a provincial subject in Pakistan. Punjab is a role model for all other provinces by performing excellent in Cooperatives sector with extraordinary achievements. Cooperatives Department of Punjab is established with aim to facilitate the formation and working of Cooperatives societies in the province. Legally, all affairs of Cooperatives societies are regulated under Cooperative Societies Act, 1925 and Cooperative Societies Rules, 1927. The detailed list of all rules and regulations of Cooperatives is as under.

Governing Law

- The Cooperative Societies Act, 1925

Rules

- The Cooperative Societies Rules, 1927

Other Laws and Ordinances

- Multi-Unit Co-Operative Societies Act, 1942
- Co-Operative Societies (Repayment of Loans) Ordinance, 1960
- West Pakistan Co-Operative Board (Dissolution) Act, 1966
- Punjab Co-Operative Societies and Co-Operative Banks (Repayment of Loans) Ordinance, 1966
- Co-Operative Societies (Reforms) Ordinance, 1980
- Punjab Undesirable Cooperative Societies (Dissolution) Act, 1993

The Functions of Cooperatives Department of Punjab

- The major functions of Cooperatives Department are as under.
- Facilitate the people in formation of the Cooperative Societies
- Guide the members about the Cooperative principles
- Introduce and promote thrift among members
- Provide training to the workers
- Provide and arrange credit to the members
- Ensure compulsory savings
- Supervise and monitor the working of the Cooperatives
- Conduct and arrange audit
- Inquiries and inspections
- Recovery of loans
- Arbitration of disputes
- Liquidation of societies

Cooperatives Societies Working Under Cooperatives Department of Punjab

Following Cooperatives societies are working under the supervision of Cooperatives Department of Punjab province.

Apex Societies

The Punjab Provincial Cooperative Bank Ltd. (PPCBL) is the only Apex financial institute with a network of 159 branches throughout the province. The membership of the bank comprises primary and secondary Cooperative Societies. The major objectives of PPCBL include the promotion of the growth of the Cooperatives movement and to provide credit business and banking services to the members of Cooperatives societies and individuals. The inspection, supervision and assessing credit requirements of the members, is also a major objective of the bank.

Credit Societies

Cooperative Credit Societies are the largest sub-sector of Cooperatives Movement in the province. The basic purpose of these societies is to provide short, medium and long-term credit facilities to their members. Short-term credit is provided for purchase of seed, fertilizer and pesticides etc., and medium and long-term loans are given for purchase of tractors, agricultural machinery, cattle and installation of tube well etc. to meet the credit requirements of the members, these societies raise funds through their share capital and borrowings from the Punjab Provincial Cooperative Bank Ltd. Though thrift is a vital objective of the movement, most of these societies have made very slow progress in the growth of savings.

The Cooperative Credit Societies of Punjab are:

- ***Farm Service Centers***

Cooperative Farm Service Centers formed a part of Rural Reconstruction of Credit and Agricultural Marketing Scheme (RRCandAM). The major objectives of these Centers are to coordinate the activities of Services Societies for improving procurement and distribution of seeds, fertilizers and insecticides etc. To assist in introduction of mechanized farming among the farmer members of Cooperative Societies by making available tractors and other agricultural implements on hire and through repairs, overhauling facilities of these implements and to assist in establishment of processing units owned and controlled by small farmers.

- ***Markaz Associate Farms Ion IRDP Cooperative***

These central institutions were organized with the objective of providing credit and agricultural marketing facilities on cooperative basis in Integrated Rural Development Project (IRDP) areas and were patterned after the Cooperative Farm Service Centers already existing in the province. The area of operation of these institutions was confined to IRDP areas. Since the IRDP schemes have been banned, these associations have been become defunct.

Housing Societies

The purpose of Housing Cooperatives is to provide better and cheaper houses especially to the lower and middle-income groups who cannot afford to own houses through their individual efforts. These cooperatives are also supposed to assure their members substantial savings in housing cost through group actions. The Housing Cooperatives have a great potential in meeting the housing needs of the growing population and in generating economic activity in the province and in the country. They are functioning on the cooperatives principles of self-help, self-finance, mutual aid and self-governance. Through Housing Cooperatives,

Government also generates its revenue as Capital Value Tax (CVT) (2%), Stamp Duty (2%) and Property Tax (varied).

Currently, there are 236 Housing Cooperatives in Punjab out of which 187 are functional, 32 are non-functional and 17 are under liquidation.

Industrial Societies

Industrial Cooperatives are intended to offer many advantages to the individual artisans, small entrepreneurs and craftsmen. The members through this medium could purchase raw material and appliances at a fair price, raise capital and market their products on favorable terms. The main purpose of these Cooperatives is to enable workers to own implements of production and to enable greater industrial self-determination. Raising status of workers from wage-earners to the partners and worker's participation in the surplus from their associated labor is also included in the objectives.

The prominent Industrial Cooperatives of Punjab is Pakistan Cycle Industrial Cooperative Society Lahore. This is the largest Industrial Society in the province and in the country. It was set up in 1953 and produces bicycles with the brand names of "RUSTAM" and "SOHRAB" and also manufactures different models of motorcycles with the brand name of "SOHRAB". This society is an example of a well-managed and profitable industrial Cooperation. The society also exports bicycles, motorcycles and spare parts.

Women Societies

- *Women Cooperatives*
Women section organize, register and supervise the working of women Cooperatives, Thrift and Industrial Societies.
- *Industrial Trainings for Women*
Tailoring, embroidery, knitting, Fabric Painting, Flower Making, Beauty Parlor and other traditional trades trainings are given by the industrial societies.
- *Micro-finance to Women*
In order to promote and uplift the economic condition of women at micro level, for supplementing the income of poor families and to alleviate poverty, a loaning policy for women cooperative societies in the province was launched.

Amount of Finance

The maximum limit of finance allocated is Pak Rupees 0.3 Million, per society against fixed and approved maximum credit limit (MCL). This finance is disbursed equitably by the society amongst its member to a maximum of Pak Rupees 0.05 Million, per borrower.

Period of Finance

Four years with six months grace period repayable in 48 monthly or 16 quarterly installments at the option and convenience of the borrowers depending upon the nature of project.

Rate of Mark-Up

Rate of mark-up is charged @ 16% p.a. In case of default, 2% penalty is charged.

Total Societies	1,484
Membership	47,016
Share Capital	Pak Rupees 21.232 Million
Working Capital	Pak Rupees 53.802 Million
Microfinance Advance	Pak Rupees 139.497 Million
Balance Outstanding	Pak Rupees 38.610 Million
Industrial Centers	55

Farming Societies

Cooperative Farming grew in Punjab from a pressing economic need. It was initiated here through a Cooperative Farming Scheme in 1948, with the objectives to rehabilitate landless refugees from East Punjab and local landless tenants on state land, to increase agricultural production through improved methods of cultivation, credit, supply and marketing facilities and supplementing canal irrigation by installing tube-wells and to develop facilities like education, medical aid, storage, recreation etc. on self-help.

Almost 142,928 acres of state land was allotted to 132 Cooperative Farming Societies organized in the Multan, Sahiwal, Vehari, Khanewal, Okara, Lodhran and Toba Tek Singh Districts of Punjab province, of which 135,318 acres were leased to 9,534 members in units of 12-1/2 acres. The remaining 7,610 acres were used for village sites and water channels etc.

Multipurpose Societies

- *The Punjab Provincial Cooperative Supply and Marketing Federation (PCF)*
PCF was established as an apex society in 1985 under a development scheme. It consists of 31 District Supply and Marketing Federation (DCFs). The main objectives of this society are to arrange supply of agricultural inputs, machinery and marketing of agricultural products of the members and to run the affairs by BOD, comprising 23 members, 16 elected and 7 ex-officio.
- *The Punjab Cooperatives Consumer Society (CO-OP)*
CO-OP was established in 1967 with Danish Govt.'s assistance. The main objectives of this society are to combat hoarding and black marketing and to ensure steady supply of essential commodities at reasonable price.

Education and Training

All the efforts to improve the Cooperative Movement cannot yield the desired results without imparting education among the workers, office-bearers, members of Cooperative Societies and the general public. Cooperative Department through its Education and Training Wing provides education and training to the members and employees, so that they contribute effectively to the development of their Cooperatives. This wing also informs general public particularly young people and opinion leaders about the nature and benefits of Cooperatives. For this purpose, Cooperative Training College has been established in Faisalabad district. Similarly, Regional Cooperative Training Institute has been established in Bahawalpur district to cater the training requirements of Multan, D.G. Khan and Bahawalpur districts.

DIFFERENCE BETWEEN ISLAMIC COOPERATIVE SOCIETY AND CONVENTIONAL BANKING

Business objective-wise, there is no difference between an Islamic Cooperative Society and a conventional bank as both are profit oriented. They invest in profitable ventures to ensure return on their investment, takes measures to safe guard their investment and timely recovery. The differences lie in the operational ethics, procedures and approach. An Islamic Cooperative Society must think about the permissibility of the project or business in the light of Qur'an before making any investment, a conventional bank does not have any obligation in this regard. By following the Sharia'h rulings, an Islamic Cooperative Society consider its work as prayer, while by disobeying Allah's order, a conventional bank does not have that scope. Account holders of an Islamic Bank are partners, they authorize the bank to invest or transact on their behalf and share the profit or loss on a pre arranged ratio. Total profit earned by the Islamic Cooperative Society is shared between the bank and depositors at pre-agreed ratio (not rate) as per account agreement. Individual depositors get their share of the total profit

as per their proportion. In a conventional bank, depositors get fixed interest irrespective of bank's earning. Additionally, Islamic Cooperative Society is trade based while Conventional banking is lending based. For this purpose, Islamic Cooperative Society follows 2 types of operations, both of which are approved by *Sharia'h*. These are:

- Profit or Loss Sharing Method (*Musharakah*)
- Profit, Mark-up (sale) or Rental Method (*Ijarah, Murabahah, Bi-Muajjal*)

Theoretically and ethically, Islamic Cooperative Society cannot give fixed profit on deposits. They declare a provisional rate initially, which is subsequently corrected after the approval of accounts by concerned authorities. In case of investments, the nature of finance determines the rate of profit. For example, in *Musharakah* mode of finance, there is no scope of charging any fixed profit. In *Bai-Salam* or *Murabahah* mode, the rate of return or sale price is already agreed or determined by the parties. Similarly, Islamic banks and cooperatives, especially credit unions differ in some of their main business lines. An Islamic bank has to act somewhat in an investment bank-like manner, taking outright ownership or shares in commodities, products, and firms. In contrast, the typical cooperative bank or credit union would own very little non-financial assets beside what it uses for its own operations and collateral seized from defaulted loans, which the credit union would normally try to dispose of quickly. Thus, the distribution of returns will differ even when financing otherwise similar projects and enterprises (Al-Muharrami and Hardy, 2013). However, Cihak and Hesse (2007) have explained that cooperative banks tend to be more stable than other banks due to the low volatility of their profits. There are several Islamic Cooperative banks in the world and especially in Malaysia, Bank Rakyat is an example of an Islamic Cooperative bank (Othman, Kari, and Hamdan, 2013). According to Abdul Ghaffar Ismail (2014), the first step in the regulation of any Islamic microfinance institution is associated with the provision of philosophical foundation of the interpretation of *Shariah's* principles, which provide complete guideline for the operations and management of such institutions.

The available options of investment for an Islamic Cooperative Society are as under:

- Consumer Finance (Retail Banking)
- Higher Purchase
- Lease or Rental Finance
- Real Estate Development Finance
- House Building Finance
- Equity Finance Participation
- Merchant Banking Operations

The Need for Islamic Cooperatives in Punjab Province

As Cooperatives Department of Punjab province is playing its vital role in the development and promotion of Cooperative Societies, it is unfortunate that there is not a single Islamic Cooperative in practice. The reason for this is the government was not very much cleared about the implementation of Islamic financial system in the country. In the light of the decisions of Supreme Court of Pakistan and Federal Sharia'h Court in 1992, the then government started some practical steps towards this cause. But, later, this process became very slow and by the time, it stopped completely when government went into Supreme Court by the view that interest free financial and banking system is not possible in the country. This case prolonged a lot and finally, both courts again ordered simultaneously to the government to eliminate interest from the country in the light of Article-38(f) of the Constitution. Now, the government has decided to act upon these decisions and in the result, the conventional banking system is rapidly converting into Islamic banking system. But, due to this gap, no Islamic Cooperative could be established in Punjab province even throughout the country. However, there is massive need

of Islamic Cooperatives due to three main reasons. First, 51% of the total country's population is living in Punjab province, which provides a huge market for the establishment of different Cooperatives to fulfill the needs and requirements of the people. Second, the population of Pakistan and in Punjab province is Muslim (97%) and majority of the people are not willing to take any financial assistance from any conventional Cooperative due the involvement of *Riba*. Therefore, the need of Islamic Cooperatives is very much high so that these people can benefited in Islamic way. Third, the awareness about Islamic financial and banking system is rapidly increasing in Pakistan, especially in Punjab province due to the efforts of different Islamic banks and Islamic financial institutions. This increase in awareness has generated a thrust among people to avail these financing facilities through Islamic cooperatives. Therefore, the future of Islamic Cooperatives is very bright in Punjab province. Islamic Cooperatives can be established to provide financial, housing and industrial facilities to the members in the light of the principles laid down by *Sharia'h*.

Although, there are some other organizations working for the benefit and welfare of the people but these are not Cooperatives and they do not work under the legislative laws of Cooperatives. Kashf Foundation is the largest micro finance organization in Punjab province which provides interest free financial assistance to the poor and needy people for the establishment of their small businesses. This organization generates its funds through charity. Similarly, there are several other NGOs which are working very efficiently for the betterment and welfare of the people in the fields of financial assistance, health and education but they are not Cooperatives. A large number of individuals are also providing their services directly to the needy people in the field of education and financial assistance. Government of Punjab also takes an initiative to provide interest free loans to the youth of the province to establish their businesses.

CONCLUSION

The importance of Cooperatives cannot be neglected in any society as they play very important role in the economic development of the country. Due to the reason that Pakistan is a developing country, the importance of Cooperatives is too much. The Punjab province has the largest network of Cooperatives who are providing health, housing and financial services to the needy people of the province.

This study is an attempt to explore the efforts made by Cooperatives in the Punjab province since the establishment of Pakistan and need for Islamic Cooperatives in the province. Government of Punjab has taken several initiatives for the formation, functioning and controlling the Cooperatives in the province. For this purpose, Cooperatives Department has been established. As Punjab is highly populated province, a large number of Cooperatives have been set up for the betterment and welfare of the people. Apex Societies, Credit Societies, Housing Societies, Industrial Societies, Women Societies, Farming Societies, Multipurpose Societies and Education and Training Societies have been established to provide maximum benefits and facilities to the members. All these Cooperatives are working under traditional or conventional financial system and there is not a single Cooperative working under the Islamic financial system. As Pakistan is a Muslim country, having more than 97% Muslims, majority of the people do not avail the facilities of Cooperatives due to the non- existence of Islamic laws laid down by *Sharia'h*. Therefore, to facilitate these people and the whole population of Punjab province in total, it is very important to establish Islamic Cooperatives to provide maximum facilities in Islamic way. Now, the government is determined to establish Islamic financial and banking system in the country, it is hoped that a number of Islamic Cooperatives will be established in the country, especially in Punjab province. This will be beneficial for those who want to fulfil their needs according to the teachings of Islam.

REFERENCES

- Al-Muharrami, S. and Hardy, D. C. (2013) Cooperative and Islamic Banks: What can they Learn from Each Other? [Online]. IMF Working Paper No. WP/13/184. Available from: <https://www.imf.org/external/pubs/ft/wp/2013/wp13184.pdf>. [Accessed 21 May 2017]
- Ciha' K, M. and Hesse, H. (2007) Cooperative banks and financial stability. [Online]. IMF Paper No. WP/07/02. Available from: <https://www.imf.org/external/pubs/ft/wp/2007/wp0702.pdf>. [Accessed 22 May 2017]
- Fonteyne, W. and Hardy, D. C. (2011) Cooperative Banking and Ethics: Past, Present, and Future. *Ethical Perspectives*, 18(4), 491-514.
- Ismail, A. G. (2014) A Framework for Regulating Islamic Microfinance Institutions. [Online]. IRTI Policy Paper 1435-05. Available from: <http://www.irti.org/English/Research/Documents/PP-1435-05.pdf>. [Accessed 21 May 2017]
- Othman, A., Kari, F. and Hamdan, R. (2013) A Comparative Analysis of the Co-operative, Islamic and Conventional Banks in Malaysia. *American Journal of Economics*, 3(5C), 184-190.
- Yunus, M. (2010) *Building Social Business: The New Kind of Capitalism that Serves Humanity's Most Pressing Needs*. New York: Public Affairs.

04-CA18-1132

OCCUPATIONAL HEALTH HAZARDS FACED BY WOMEN BANGLE WORKERS: A CASE OF HYDERABAD, SINDH PAKISTAN

PROFESSOR DR. MISBAH BIBI QURESHI¹

ABSTRACT

Hyderabad city is famous for bangle (Choori) making all over Sindh, Pakistan. Bangle making has a very long history well before the partition of India. The art of bangle making originated from India through people who migrated to present Pakistan. Women in bangle making have been actively involved and perform various tasks to achieve the final product. Women's role in the context of economic contributions and the health problems of women bangle workers have seldom been studied due to the ignorance and overall attitude of Government Bodies and society in general. This research attempts to examine the health problems faced by female bangle makers and also highlights some of the social challenges that they encounter with while working. This research was conducted using feminist methodology. Qualitative methods were used as a mode of investigation. In-depth qualitative interviews were used to collect data from 27 women bangle workers from Sindh. The findings of the study indicated their poor health status. Bangle workers suffers some of the hazardous diseases that sometimes prove to be life threatening such as backache, joint pain, eye diseases, burning sensation, suffocation, dehydration, asthma, loss of fingerprints and, most commonly, tuberculosis due to the unhealthy and unhygienic working environment. Results also show that in case of an accident, no compensation payment or medical facility is provided to the women bangle workers. Occupational health hazards have never been the focus in either legislation or implementation and are generally ignored. Hence, there is a culture of acceptance regarding facing difficulties, combined with a lack of awareness of how to effectively deal with it. The study also tries to provide the strategies for solving the problems of home based bangle women workers for policy makers on national level and labor organizations in Pakistan.

Keywords: Bangle women workers, health hazards and poverty

INTRODUCTION

In Pakistan, Hyderabad City is very famous for choori² making, usually known as the 'City of Bangles'. Hyderabad is also the major supplier of bangles all over Pakistan and sometimes abroad (LEF, 2010; Pathan, Shah and Ilyas, 2009; Wassan, Chandio and Khatoon, 2010; Jamali, 2007). At the time of partition of Indo-Pak, the emigrants from India brought the bangle making art with them. After migrating in 1947, they settled in Hyderabad and started manufacturing bangles at a small scale. Later, the communities residing in the vicinity also became involved in this industry for earning their livelihood and thus a large number of people adopted bangle-making as their profession (LEF, 2010; Pathan, Shah and Ilyas, 2009). According to one report by LEF (2010, p.15) some "investors tried to establish the bangle-making industry in other cities of Pakistan but they did not succeed because the weather of the Hyderabad is most favorable for the production of bangles. A little moisturized weather and the precious sand of river Indus bed found in Hyderabad is used in making bangles and is very beneficial for the manufacturers".

A bangle is a type of ornament mostly used by Asian women in different styles (Khan, 2012). The term "Bangle" was identified by Agarwal as quoted in Jamali (2007, p. 147) from

¹ Professor Dr. Misbah Bibi Qureshi, Institute of Gender Studies, University of Sindh Jamshoro. E-mail:- misbahbq@gmail.com, misbah.qureshi@usindh.edu.pk

² Choori means bangle in Pakistani national language

the Hindi word “bangri or bangali”, meaning a ring for an arm or leg. There is strong evidence that women have been adorning their arms with bangles since ancient times in the region. The bronze figurine of a “dancing girl excavated from Mohenjo-Daro is one of the clear evidence of use of bangles in ancient times”.

In Pakistan, choori is the most popular jewelry item throughout the Country. The demand of Glass Bangles rises at the time of Eid-ul-fitr³ till around Eid-ul-Azha⁴, and in seasons of marriages and functions in Pakistan. Interestingly, in the time of marriage, bangles are given to the bride from both, parents and in-laws (Wassan, Chandio and Khatoon, 2010).

BANGLE MAKING PROCEDURE

There are different stages of making bangles. In the first stage (Open Bangle), molten glass is converted into semi-circular open bangles that are bundled together into a tora⁵. In the second stage (Closed Bangle) the open bangles are levelled and joined into closed bangles. The final stage (Finished Glass Bangle) takes the closed bangle and produces the finished glass bangle. Most of the processes in each stage of the production cycle involve the application of intense heat to glass for the purpose of melting, shaping, reshaping and joining. The diverse processes require different sources of heat, including furnaces, ovens and even small burners. Other generic processes include snapping glass, making bundles of bangles and the applications of chemicals for cleaning and polishing bangles (ILO, 2004).

LABOR FORCE IN BANGLE MAKING BUSINESS

Majority of workers in bangle making industry are women, working in their homes. Women in bangle work are an integral part; however, they get much lower wages than men (Wassan, Chandio and Khatoon, 2010). Most of them are unskilled and only a small number is trained as they learn from their elders during bangle making at their homes (Jamali, 2007). Poverty and non-availability of other jobs are the main reasons of people joining this informal industry. Due to the cultural norms and community restricts their mobility is very low. They are not allowed to go out.

WORKING ENVIRONMENT

The women bangle workers usually live in mostly congested areas containing one room or two very small rooms, kitchen and one washroom. Much of the glass bangles work is carried out in such homes (ILO, 2004; LEF, 2010) which lacking basic facilities, (education, health, clean water, electricity and gas, etc.). Due to the non-availability of basic facilities, women work under gas lamps in unbearable heat and in unhygienic and unventilated environment that cause severe health problems. Beside this, in case of any accident, no compensation or medical facility is provided. It is quite important to explore their health status and suggest recommendations to improve their working conditions.

GAPS IN EXISTING RESEARCH

It is clear that the problems of Glass bangle industry have been gaining some positive and helpful research attention over the past few years in India (Bansal and Kumari, 2016; Brahmapurkar et al., 2013; Khan, 2012; Chandra, 2009; Pande, 2008). As far as my knowledge is concerned, Centre for the Improvement of Working Conditions and Environment Labour and Human Resource Department, Government of Punjab Pakistan in 2003, Channa, 2003 and ILO, 2004 were the first among other researchers, in Pakistan (for example see Shamshad et al., 2015; LEF, 2010; Wassan, Chandio and Khatoon, 2010; Pathan, Shah and Ilyas, 2009; Jamali, 2007) who worked on women bangle workers and glass bangle industry issues. I

³ Muslim festival of breaking of the fast in the holy month of Ramadan

⁴ Muslim Festival of the Sacrifice on the 10th day of the holy month of Dhu-al-Hijjah

⁵ Tora is consisting of 300 bangles

believe that such attention has resulted in important knowledge gains; however, I found major gaps in above mentioned studies.

Almost all of these studies were conducted by male researchers. Most of the researchers focused on child labour. Some of them conducted research in Glass Bangle Industries (factories). Researchers followed quantitative methodologies; some used surveys and self-administered questionnaires, whereas one applied Medical and Physical Examination form for Working Children in Glass Bangle Industry and conducted by a physician. The lists of the different questions were provided in their studies. The questions asked in these researches may not be incompatible with participants' own perception or understanding of their experience, in which subjects respond to predefined incidents and questions on coping with difficulties while facing bangle making process at their home, therefore they offered a one-sided explanation.

Using set definitions is also problematic. In response to these methodological problems, our study does not operationalize but instead gives participants the freedom to talk openly (be at ease) about their views, experiences and strategies to coping with difficulties. Furthermore, in all research studies, ethics is of primary concern. Perhaps the most important aspect of research is ensuring that the emotional and physical safety and human rights of the subjects involved in the study are protected. These safeguards require thought prior to the implementation of the study itself. Consideration was not always given to this in earlier quantitative Pakistani researches. Furthermore, most research work has been done by private companies and NGOs. Less research work has been found so far that was conducted by an individual researcher. This requires more attention by researchers. Attempts to fill this gap are considered vital as it helps new researchers to understand the ethical consideration while conducting the research on bangle women workers which may help to generalize the studies for all.

AIM AND OBJECTIVES

This qualitative study sought to explore the occupational health hazards faced by women bangle workers during bangle making at home. Looking at the actual situation of the women bangle workers in Sindh, this research also aims to make a contribution to the shape of strategies for dealing with these problems, both individually, and at an organizational level.

METHODS

This study adopts a feminist methodology that places women at the centre of the research and thought process. Historically, feminists have been drawn towards qualitative research because of its use in exploring experiences, reflections and everyday practices and interaction, allowing individuals to describe the world as they see it (Creswell, 2009; Denzin and Lincoln, 2005; Bryman, 2004). Structured questioning in quantitative methods lacks the ability to gain an in-depth understanding of the participants' experiences because it does not allow the individuals to fully express their views (Qureshi et al., 2014, p. 70).

DATA COLLECTION

I initially started to develop a close ended questionnaire to examine women's experiences but rejected this in preference for a qualitative approach due to the complicated nature of the topic. In addition, qualitative methods aimed to grasp the women's' experiences from their own perspectives, rather than involving pre-chosen categories (Silverman, 2009). A qualitative approach meant that I turned to ethnography as an approach to data collection.



Figure 1. Interview with a participant

RESEARCH SITE

The research was conducted in urban area of Sindh province (See figure 1). Ten houses have been selected and located in the urban centre of Sindh Province. The choice of urban settings for this study was influenced by the observation that many female workers belonging to this profession reside in this urban area contrary to other female workers who worked in the bangle factories. The female workers were recruited and were selected using a purposive sampling procedure. Due to the nature of this research, purposive sampling strategy was used. After 27 interviews was completed, informational redundancy was reached. Although less than the original thirty targeted for inclusion, sampling was stopped at this time because no new information was forthcoming.

ETHICAL CONSIDERATION

The major ethical issues in conducting research were identified in literature and persist throughout all phases of this research such as; deception and informed consent, respect for anonymity and confidentiality, and respect of privacy and data storage (Peled and Leichtentritt, 2002). It was important for the researcher to ensure a duty of care to participants that the research was “conducted in a safe and ethical manner” (University of Leeds, 2010). There was no need for deception of any form in this research and therefore before starting the interview session each participant was fully informed- as far as is ever possible- of the purpose of the research and also that this work is publishable. Interview respondents received a subject information sheet and subject consent form (containing: purpose of the research, right to withdraw, confidentiality assurances, and researcher contact details) which provided details about the research and their rights as participants in advance. All participants were advised that

any information given was to be treated in strict confidence and that the raw data including transcripts would not be made available for any other person or purposes. The forms did not request real names of participants or location of workplace etc. and the data have been presented in a way which does not enable participants to be identified as individuals at any stage. Interview participants were again assured “confidentiality and anonymity through the use of pseudonyms” (University of Leeds, 2010). Interview transcripts, audio and video files were saved with the assigned pseudonym. In order to maintain confidentiality and secrecy of participants’ data, each participant was assigned a different identification number along with a pseudonym and her real name and details did not appear on any of the document. Data was stored on a password protected Personal Computer. All interview transcripts were stored in a locked filing cabinet.

ANALYSIS

The data were first transcribed through back translation technique and then analyzed by using a feminist ethnography approach.

RESULTS

Poor health status was common in the Women bangle workers and some findings are very alarming and serious. Women bangle women suffers some of the hazardous diseases that are life threatening sometimes such as

- Severe pain in knees and joints and backache due to inadequate sitting posture while making bangles on flames, especially during menstruation period.
- Eye diseases and infections, burning sensation and conjunctivitis, ulcers and allergies, weakness of eye sight. In the process of carving the designs on the bangles, minute pieces of glass hit the eye balls of workers.
- Excessive heat and lack of ventilation causes suffocation.
- Dehydration occurs as a result of huge water loss due to excessive sweating.



Figure 2. Woman bangle worker mixing hazardous chemical

- Female workers inhale toxic fumes from the paint thinners, chemicals, solvents and sprays used for coloring bangles that cause severe asthma, tuberculosis and lung cancer (See Figure.2)
- T.B further spreads or multiplies in female workers because of very close sitting during work.



Figure 3. Burn and wounds

- Usage of furnaces can cause various health problems, as well as burns and wounds (See figure.3).



Figure 4. Hazardous chemicals used at home by women bangle workers

- Loss of fingerprints is also common among women bangle workers. Women bangle workers usually face disappearance of thumb impressions due to the usage of different chemicals with bare hands (see figure. 4), consequently facing problems in getting their national identity cards (CNIC) which, in turn, cause social problems.
- In case of any accident or injury, no compensation payments and medical facility is provided by the employer (middleman).



Figure 5. All in one room

- The women bangle workers who work at their homes are not considered as formal /registered workers by the Government, therefore Medical care facilities and cash benefits are not provided (See figure 5).
- Poverty and high rate of inflation of necessities force women to join this home based work.
- Aforementioned diseases occur due to the unhealthy and unhygienic working environment and no usage of covers and masks.
- Their male counterparts do not recognize their contribution as a bread earner.
- Women bangle workers receive less wages, social protection and general facilities compared to male workers.
- There is a culture of acceptance of discriminatory behaviors in general, combined with a lack of awareness to effectively manage it. The reason behind this acceptance was that most of the respondents were illiterate and have no option to find another job.

SUGGESTIONS

On the basis of the findings one can easily conclude that occupational health hazards of home based women bangle workers have never been the focus in either legislation or implementation and generally ignored.

- In order to reduce exposure to various hazards, women bangle workers should wear helmets, eye protection spectacles, fire proof rubber gloves, gowns and shoes etc.
- Awareness-raising workshops should be arranged by the NGOs to enlighten the women bangle workers.
- Media should play its role in creating awareness among general population by showing animated clips for illiterate people.
- Employer should train the women workers to deal with medical emergencies and injuries.
- Employer must install safety gadgets especially first aid kits, fire detectors and fire extinguishers at women workplace.

- Workplaces should be checked regularly for proper protective equipment, good ventilation and hygienic environment.
- Labour laws should be implemented and made effective by Government.
- Bangle Women workers should be officially registered as labourers and to provide the maximum benefits of social security.
- Equal opportunity and equal wage policy should be ensured and implemented in order to remove discrimination between male and female workers of bangle industry.
- In order to reduce poverty, government should start giving small loans and old age benefits to women bangle workers.
- The Government must facilitate the children of women bangle workers with free education so that they may live a better life.
- It is mandatory for the employer to arrange compensation payments and medical facility in case of any accident or injury to the women workers.
- Government should pay special attention to women bangle workers who have lost their thumbs impressions and are unable to register their Identity cards and passports.
- Translations of useful information such as chemical hazards and basic safety measures should be provided in the local languages.
- In accordance with the inflation rate, wages should be revised.
- Government should strictly keep check on the contractors and investors in case of violation of laws.

The present study has contributed to the existing literature of Glass bangle industry and women workers and their problems, and has made an original contribution in the field of Women Studies. The findings of the study have made a major contribution to understanding their social issues in Sindh.

This study shows that there is a clear link between the social, cultural and economic conditions in Sindh, and how the 'patriarchal' culture shapes peoples' attitudes towards homebased workers. The study also tries to provide strategies for reducing the occupational health hazards for policy makers and Labour organizations in Pakistan.

CONCLUSION

The overall results of the study suggest that there is a possibility of a high level of under reporting of problems faced by home based women bangle workers. It is also felt that the lack of awareness as well as non-provisions of general facilities are the main causes of unsafe working environment in Hyderabad Sindh, Pakistan.

REFERENCES

- Bansal, R. and Kumari, C. (2016) Observational study of home based glass bangle women worker of Firozabad city. *Indian journal of applied research*, 6(2) 169-170.
- Brahmapurkar, K. et al. (2013) Morbidities in the glass factory workers of central India. *Journal of medical and dental sciences*, 7(6), 29-33.
- Bryman, A. (2004) *Social Research Methods*. New York: Oxford University Press.
- Chandra, A. (2009) Child labor: A study from anthropological perspective with special reference to glass industry, Firozabad. *Anthropologist*, 11 (1), 15-20.
- Channa, S. (2003) Bonded bangles. *The Dawn Review*, 9 January.
- Creswell, J.W. (2009) *Research design: Qualitative, quantitative and mixed methods approaches*. London: Sage Publications, Inc.
- Denzin, N.K. and Lincoln, Y.S. (2005) *The Sage handbook of qualitative research*. London: Sage Publications, Inc.

- Home Net Pakistan Labor Education Foundation (LEF) Karachi (2010). *A baseline survey on home based workers of bangle industry*. Karachi: Home Net Pakistan.
- International Labour Office (ILO) (2004) *A rapid assessment of bonded labour in hazardous industries in Pakistan: glass bangle-making, tanneries and construction*. Geneva: International Labour Office.
- Jamali, N. (2007) The glass bangle industry in Sindh: “a case study of district: Hyderabad”. *Sindhological studies*, 23(1-2) 147-167.
- Khan, A. (2012) Bangle industry in India: the cruel darkness behind the vibrant hues. [Online]. Available from: <https://www.youthkiawaaz.com/2012/04/bangle-industry-in-india-the-cruel-darkness-behind-the-vibrant-hues/> [Accessed 15 January 2017].
- Pande, R. (2008) Women and children workers in the old city of Hyderabad. *Intersections: gender and sexuality in Asia and the pacific*, 17, 02-12.
- Pathan, P., Shah, P. and Ilyas, R. (2009) Bangle women and her contribution in household economy: a case of Hyderabad, Sindh. *The Women*, 1, 109-115.
- Peled, E. and Leichtentritt, R. (2002) The ethics of qualitative social work research. *Qualitative Social Work*, 1(2), 145.
- Shamshad, N. et al. (2015) Women home based workers in rural areas of Pakistan. *American Scientific Research Journal for Engineering, Technology and Sciences*, 11(1), 173-182.
- Silverman, D. (2009) *Doing qualitative research*. London: Sage Publications Ltd.
- Wassan, A., Chandio, R. and Khatoon, Z. (2010) A socio-cultural education and training of women in glass bangle industry: focused area Hyderabad Pakistan. *The Sind University Journal of Education*, 39, 67-88.
- University of Leeds (2010) *Research data guidance*. [Online]. Available from: http://ris.leeds.ac.uk/info/71/good_research_practice/106/research_data_management [Accessed 10 January 2010].

06-CA12-1114

LAW AS AN ENABLING DEVICEANTONIOS E. PLATSAS¹**ABSTRACT**

To many law may be perceived as nothing more than a restrictive device. To the legal scholar, however, law may be perceived as an enabling device, even where it restricts. Nonetheless, it would not be appropriate to maintain that every restrictive norm enables. A paternalistic norm may enable. A tyrannical norm by definition restricts. This exposition advocates the position whereby law can effectively be a device of freedom. Correspondingly, there cannot be freedom without law, even though the opposite is not necessarily true. Furthermore, law, as an enabling device, points to liberal legal theory. The classical statist model of liberalism, as compared to the more communitarian model of liberalism, is promoted, even though partial inroads to communitarian liberalism are made (especially where the State is an absentee). Additionally, the model promoted is one, which comes with rights and duties. That is to say the model promoted is of relative nature and makes allowance for a hybrid state of affairs, wherein *anthropos* is the carrier of rights but also, importantly, the fulfiller of duties. Law serves man. Equally, man serves the law. The paper proceeds with the elaboration, exemplification and critical analysis of the above, based on relevant literature from legal, political and economic theory. Thereafter, certain of the practical and theoretical connotations of the proposed analytical model are considered in detail. The analysis thus takes into account classic legal theoretical matter and tests such matter against the operation of law in the domestic and the international sphere. For instance, the analysis will revert to the theoretical differentiation between norms, laws, rules and commands by explaining how such variable legal matter can be manifested in practical matters. In this respect, the leading example of the legal harmonisation thesis will be utilised in the manifestation of certain of the points made, especially considering that such a thesis has wide-ranging implications for the domestic and the international sphere.

Key Words: law, liberalism, statist liberalism, communitarian liberalism, anthropocentricity, values, principles, norms, rules, commands, harmonisation of laws

INTRODUCTION

‘The freedom of the mind is the source of all freedom.’ (Jenks, 1969, p 54).

This article deals with the fact that law is an enabling force; a force of freedom for society and individual. It, thus, negotiates the desirability of law acting as an enabling device. It acts on the rather established hypothesis that perfect life is one which comes in agreement with fair laws, whilst human existence succumbs to no other man but to laws and laws alone.

LAW AS AN ENABLING DEVICE

Surely, to the lay person the law might be perceived as a restrictive device. ‘Law restricts us.’ – ‘There is too much red tape.’ - ‘Regulation is all too abundant.’. Let us take a closer look on the related. First of all, the lay person may certainly be excused for thinking law as a restrictive and bureaucratic device, when law may actually not be such a device. The reason for such a misconception may be the fact that with the development of society and corresponding laws, law became an ever more distant reality to the lay person, a technocratic chimera. Yet, such

¹ Faculty of Law, Higher School of Economics, National Research University (Moscow), Russian Federation. E-mail:- Aplatsas@hse.ru

perception neglects the very essence of law. Beyond this, when it comes to an initial categorisation, legal norm in any given society can take a number of forms:

- Norm which is not paternalistic (purely enabling)²
- Norm which is partially paternalistic (generally enabling)
- Norm which is wholly paternalistic (enabling on the basis that even though this deprives choice, it came about by way of democratic process)
- Norm which deprives freedom (restrictive)

FREEDOM AND LAW

Law thrives in freedom. Law liberates. When it restricts, it ought to do so in the name of the freedom of the many; the enlightened many. Law enables. It is with trust that one abides to such law cognisant of the fact that laws will not always be free from error. Laws are otherwise not walls but pathways of freedom. In the realm of law, we hold that these truths are eternal. But our laws do not operate only in the interests of justice; they also seek fairness and *epieikia*. Furthermore, the call for freedom is one that expands all over the world nowadays.³ To the author, freedom takes two forms in the main: freedom of the mind and freedom of commercial operations; the former has to do with the primordial fundamental rights of the individual; the latter has to do with the co-extensive economic rights which are given birth out of civil rights and liberties in the first place.

There cannot be freedom without law, even though the opposite is not necessarily true. Three (3) centuries ago, Locke has actually argued ‘where there is not law, there is not freedom’ (Locke, cited in Domingo, 2010, p. 138). Normally, in order for laws to enable, they should come in the form of rules (as opposed to them coming in the form of commands); the following example is illustrative of our point:

‘Every contract or duty within [the Uniform Commercial Code] imposes an obligation of good faith in its performance and enforcement.’⁴ (Example of a rule)

Any compulsory civilian/military conscription law (Example of a command)

The difference between a rule and a command is that the former actually comes with an expectation (that of good faith in trade operations), whilst the latter comes with an obligation (that of civilian/military service). The former aspires to change of human behaviour; the latter imposes a predictable (Reynolds, 2005, p. 334) change in human behaviour. The former points to an ‘ideal’ state of affairs, whilst the latter imposes an ‘ideal’ state of affairs. The point of convergence between the two is that both rules and commands make the law, whilst breach of either may come with legal sanction. However, clear preference under our thesis is for a legal framework which enables by way of rules rather than commands. As Robin Letwin has rightly argued: ‘[o]ur freedom of choice depends on the extent to which we are governed by regulations that have the character of rules rather than orders’ (Letwin, as cited in Reynolds, 2005, p. 334). This builds upon established legal doctrine according to which ‘[t]he notion of law as a command and merely a command cannot be satisfactory to anyone’ (Buckland, 1945, p. 49).

² This comes in agreement with the approach expected under the calls of liberalism (political liberalism and legal liberalism being the counterparts of economic liberalism). E.g. recent European examples of liberalisation in the sphere of legal services are Directive 98/5/EC (Establishment Directive) [1998] OJ L77/36 and Directive 2005/36/EC (Recognition of Qualifications Directive) [2005] OJ L255/22. For an illuminating discussion see R.G. Lee, ‘Liberalisation of legal services in Europe: progress and prospects’ (2010) 30(2) LS 186-207.

³ In the sphere of economic laws, the obvious examples are those of the World Trade Organization, the European Union and the North American Free Trade Agreement, to name but a few. The idea behind these organisations is the creation and sustainability of market(s) liberalisation. In relation to the European Union see e.g. R.G. Lee, ‘Liberalisation of legal services in Europe: progress and prospects’ (2010) 30(2) LS 186-207, 186.

⁴ §1-304 (Obligation of Good Faith) of the American Uniform Commercial Code.

The Willenstheorie may have a role to play in this respect. In short, this is theory which provides that the ‘the rule of law gives effect to each man’s will so far as this is consistent with equal freedom of other men’s will, according to a universal law of freedom’ (Buckland, 1945, p. 49)⁵. Freedom is, thus, one of boundaries.

In any case, the notion of law is multifaceted. The diagram, which follows, understands law, in its fundamental essence, as a hierarchical system of values, governing principles of law, legal norms and laws themselves. Thereafter, one could extend such model by including rules and commands.

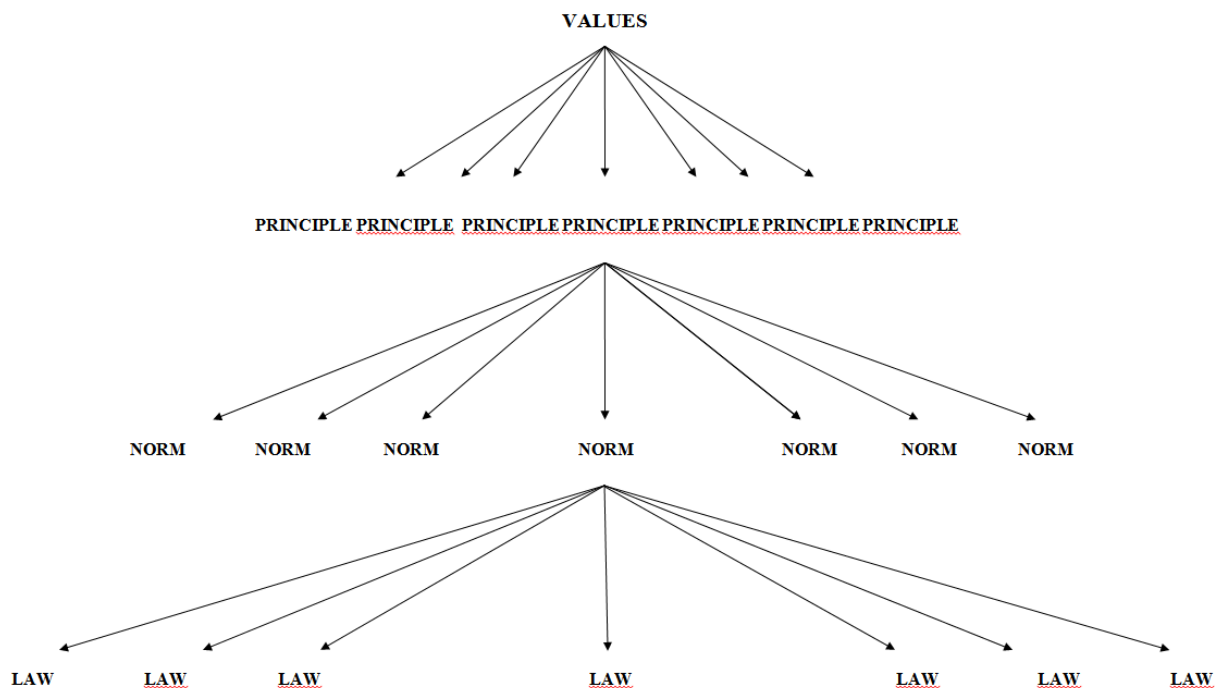


Diagram 1 out of 1

Values are taken to be definitive notions of human existence; principles are constitutive of values, whereas norms (legal or social) prescribe human behaviour implicitly or explicitly, only for them to be crystallised into concrete laws. Laws, on the other hand, normally contain specific rules and, as stated, may even manifest themselves by way of commands.

The example of harmonisation of legal systems is indicative as to how e.g. economic and political values may transform into domestic law. Let us propose that the value of freedom of trade, the old and well-known laissez-faire doctrine, is an economic value, which defines many of the world’s legal systems nowadays. The more concrete legal principle behind such an economic value is what jurists would call the principle or the idea of freedom of contract. The question would be how would such a principle transform itself into legal norm and, subsequently, into harmonised law. The European experience on this is quite illustrative: Articles 4(2)(a), 26, 27, 114 and 115 of the Treaty on the Functioning of the European Union clearly establish such an environment of free trade, in that they created a normative supranational environment, an internal European market for free trade.

⁵ Citing Hastie’s translation of *Philosophy of Right* 45

ENABLING LAW FOR AN ENABLING SOCIETY

Law in society is a central characteristic of Aristotle's man as *zōon politikon*. Beyond this, we need to ask ourselves whether our analysis should stop there, that is in the recognition that human society is made out of political beings who have laws, laws which they should normally respect. The author wishes to somewhat depart from such a view, in the sense that the view in question restricts itself to a factuality. The proposition herein is that, whilst it is a fact of life that society is made out of political beings, societies are there to enable (as are the laws thereof).

Then the quest for freedom, happiness and perfection does not become an individual exercise but rather an exercise of the collective; the collective which would, in the first place, enable the individual. In such a society, full recognition is granted to 'the principle of equality of rights among citizens regardless of their social, geographical, professional, ethnic, or religious background – or their wealth' (Brousseau et al., 2012, p. 464). This approach would also enable a perception of the law whereby the law operates as a uniting force of heterogeneous components in a given society (Reynolds, 2005, p. 328). So far, however, whether the ideas of capitalism or socialism were utilised in one's analysis, these ideas pointed to a mode of legal machinery operations, which moved either on a top-down basis, that is from the society to the individual (socialism) or on a bottom-up basis, that is from the individual to the society (capitalism). In one's perception of the matter, one is of the view that, whilst a top-down model is likely, this is to be the case only where the collectivity enables the individual (as opposed to it merely serving the individual). Close to Adam Smith's perception, our proposition suggests that there should be little or no legal frameworks but if there are such frameworks, then those frameworks should normally enable the individual. In short, our perception of legal frameworks is a minimal one and, where this is the case, frameworks would be enabling ones.

One's proposition for an enabling society, through enabling law, places the Rule of Law at the very centre of one's analysis. Accordingly, the position advocated is related to that of legal liberalism, in which case the thesis of Hutchinson and Monahan is of interest, in that the Rule of Law for them stands as 'the central jewel in liberalism's crown' (Monahan and Hutchinson, cited in Cotterrell, 1996, p. 456). Rule of law is normally promoted as a form of minimum law (Cotterrell, 1996, p. 463). Legal liberalism is, thus, the shortest way to a society that manifests its will to promote the welfare of individuals (and by extension the welfare of society itself). To bypass the problem of 'certain individuals [being] [...] morally isolated and legally unprotected; unable to and unwilling to call either on legal agencies of the state or their fellow citizens for aid' (Cotterrell, 1996, p. 463), we should put forward an analysis whereby the State (as the crystallisation of a society of the individual) acts in the same pro-active fashion as its pro-active individuals would act in their own life and towards one another. Accordingly, legal liberalism is not necessarily and wholly repugnant of a moderately pro-active State. By having such a model of a State, we escape the need for excessive regulation, which would not fit a structure of a State that operates under liberal ideal. In other words, whilst our model of the Rule of Law is promoted as a form of minimum law, inroads to a more expansive Rule of Law are made, especially where a minimum law approach (e.g. one that lacks additional legislation to the effect of our Rule of Law) would lead us to absurd or poor results. In our thesis, the Rule of Law is of minimum original specification but of expansive subsequent operation, where this would be appropriate, only that it would not be for the legislator to unilaterally expand such rule of law on a top-down basis and in a fashion that creates a polynomous legal order; it would be for the citizen to directly alert the legislature to the effect of expanding the original core of a limited, in its conception, albeit fundamental Rule of Law model.

In our analysis, the classical statist model of liberalism (Luban, 1994, p. 32-33) as compared to the more communitarian model of liberalism (Luban, 1994, p. 33) is promoted, even though we would probably have to opine that partial inroads to communitarian liberalism

could be made (especially where the State would be absent altogether). The difference between the two is found in that the former (statist liberalism) places its emphasis on rights and the rule of law, the model operating mainly in pursuit of order, whilst the latter (communitarian liberalism) places its emphasis on the relationships of citizens, the model operating predominantly in pursuit of justice (Luban, 1994, p. 33). Individual responsibility is the case in the former model ab initio, even though we know that this amounts ultimately to the responsibility of the collective; individual and collective responsibility is ab initio the case in the latter model (Luban, 1994, p. 33). Here is where one wishes to make a contribution: whilst one recognises the paramount importance of individual responsibility close to the calls of classical liberalism, one is of the opinion that collective individual responsibility should manifest itself in the relationships of individuals towards one another and in the absence of the State in enabling. That does not negate one's view in favour of the superior character of classical statist liberalism; it simply places the classical liberalism as the default rule in our analysis, whilst promoting communitarian liberalism as a reality that would occur in the absence of the State. Communitarian liberalism would only enable if the State of individuals would not.

Yet, one cannot escape the reality of modern legal complexity. Our societies have become peculiar legal creatures of polynomy. Byzantine structures of complexity define the modern legal system. Complex as our societies became, so have our laws. There is inflation of regulation. Maybe then the fact that regulation is created in excess, creates a need to create further regulation. This is hardly satisfactory. This moves us away from the original position for minimum regulation in society. Regulation became the master rather than the servant. Rather than the laws serving us, we serve the laws. Indeed, this cannot be a state affairs whereby law enables. How could it?

Additionally, even though it is understood that the law, as a whole, is not just a collection of rules but rather a systematic structure (Reynolds, 2005, p. 32), that is not to say that we should sacrifice the degree of freedom which the law should inspire in the altar of systematisation. Equally, the degree of systematisation should be one that reinforces the enabling features of the law; not one that systematises legal information by disregarding practicalities and necessities.

IDEOLOGICAL CORE OF LAW: ANTHROPOS

The individual stands in the middle of our analysis. In other words, our analysis is anthropocentric. This individual is characterised by autonomy and liberty (Ogus, 2010, p. 65). Collectivist understandings of law and *anthropos* are worthy of accommodation in our proposed thesis to the point that collectivism does not disallow even marginal understandings of individualism.

Law serves man. Laws are not made for machines and microchips. Laws are made for man. Laws are made for machines and microchips to serve man. Law is the servant of anthropos; not his master. Equally, implications of authority are ever-existent in the relationship between man and law, law standing above the will of the man. Whilst these implications of authority are superimposed over the exoteric existence of man, they do not touch upon the esoteric existence of man. Thus, laws have exoteric force only on human existence. The authority of law over man is the result of the law's well-being. Laws derive their authority from their legitimising ethos. Thus, '[l]aw's authority might depend on how far it corresponds with, or meets, felt needs for regulation of social relations' (Cotterrell, 2002, p. 638).

PATERNALISTIC LAWS DO NOT NECESSARILY AMOUNT TO RESTRICTIVE LAWS

Another common misunderstanding is that laws that are ‘paternalistic’ tend to be perceived as restrictive, when, in reality, they may actually enable. As has been rightly suggested, the question here is the amount of freedom that law should give (Ogus, 2010, p. 62); not whether it restricts or enables altogether. In other words, it is not so much the question of restrictions here but rather whether or not law reduces risks (Ogus, 2010, p. 62). Laws, which restrict, may actually enable (Sunstein and Thaler, 2003, p. 1159-1202).

If the father of the family imposes a ‘rule’ on his child by clearly advising it that it should avoid talking to strangers, surely that would be a paternalistic move in the form of a command. That would create a ‘law’ by way of command in the family environment (as opposed to creating law by way of a rule). That law would on the face of it restrict. *Secunda facie* the very same command would enable. What would it enable? On the basis that the command would be carried out, it would enable the very protection of the younger member of the family. *Laws, which come in the form of commands, may be very much like those commands of the good father in a family.* They may –on the face of it– restrict but in reality they enable.

In addition, it is understood that the value of laws arises out of the fact that laws are neutral impersonal responses to personal matters (Aristotle, cited in Reynolds, 2005, p. 23). On the face of it then, the father’s command should only be perceived as impersonal response to a given person, his child (even if it would be directed to specific offspring). So too, the impersonal nature of the father’s command here comes out of the fact that every reasonable father in a family would wish to protect his offspring. By extension, the paternalistic command of the father restricting his child talking to strangers can only act as enabling law, providing for the well-being of his offspring, that is on the basis that it is not in the interest of the child to normally speak to strangers.

In an ideal world, laws should actually only enable. This is an idea that few would resist. Our freedom then is one emanating from law. Our freedom, however, would have to be ultimately somewhat regulated. Law is our liberator, recognising that raw freedom without limits can be tyrannical and oppressive. As Lacordaire once said:

‘Between the strong and the weak, between the rich and the poor, between the master and the servant, it is liberty that oppresses and the law that sets free’ (Lacordaire, cited in McCorquodale, 2010, p. xii).

Nonetheless, a pragmatic approach in the matter would suggest that occasionally restrictive regimes may be enabling ones. Thus, one’s model is one of liberalism, which comes with rights and duties.⁶ That is to say that our model is of relative nature. That is not to say that a tyrant’s legal directive on anything is an enabling law (unless, of course, that tyrant would be a liberator, which is a contradiction in terms). Law emanating from a tyrannical regime would rarely address the needs of the social. Accordingly, our preference clearly falls in an approach whereby ‘normative ideas [are] embedded in social practices’ (Cotterrell, 2002, p. 640). Harmony between the social and the legal should be maintained on all occasions.

Externality provides one of the bases for using the law as a restrictive device (Ogus, 2010, p 64). Essentially, we speak of a situation where the individual (in the form of a natural or legal person) turns against third parties or society (Ogus, 2010, p. 64). This state of affairs would then justify restrictions that enable and it is one concerned with an economic analysis:

⁶ Cf. the position of neo-liberalism which seems to be placing its emphasis on individual freedom and choice rather than on duties to others (Cotterrell, 2008, p 153).

is it not less costly to restrict than allow harm to materialize? (Ogus, 2010, p. 64). If it is, then restrictions should be the case. If it is not, then the law should not interfere. Lack of adequate information is the second basis for interference that is not restrictive. The individual here cannot make an informed decision. The law then intervenes and interferes to the benefit of the individual. Again, such interference is non-restrictive. On the contrary, the individual is enabled to commit acts, which he otherwise would not be able to commit (Ogus, 2010, p. 64-65).

Beyond this, paternalism in law can have two faces: a hard face (where it deprives choice) and a soft face (where it streamlines choice). A law which, on the other hand, is not paternalist is purely enabling.

It is important to note there that in the very essence of the matter even an otherwise paternalistic law may amount to a law which enables, on the basis that such law, *inter alia*, comes in agreement with the ethos, the ideological norms and values of the people it addresses. Thus, as Abioye has maintained in a different context, it is true that:

‘[f]or any law to be binding on a group of people, for it to be obeyed and respected by the people, without the threat of sanctions, it must reflect the norms and values of the people which it seeks to bind’ (Abioye, 2011, p. 61).

PERFECT LIFE IS THE LIFE WHICH COMES IN AGREEMENT WITH LAW

Enabling laws are the ideal. One wishes to reiterate that even where those laws restrict, they actually enable. Beyond this, one could certainly argue that perfect life is life in agreement with those laws that actually enable. Thus, there are two elements of liberal essence here:

- Liberal essence, in that laws should enable
- Liberal essence, in that those very same laws are adhered to by way of a will that is the result of free choice

Yet, it is not for the State to prescribe perfect life or indeed good life. In this respect, nanny States are omitted as paradigms from our analysis, in that they prescribe the life of the individual and by extension they offer him their version of perfect life. Our thesis complies, therefore, with political liberalism, the theory which suggests that the State should be neutral in one’s life (Green, 2001, p. 87). The individual prescribes his life; not the State. This individual’s ‘laws’ are not prescriptive of his life; they are enabling him to lead his life together with others. It is the individual that drives society; not society that drives the individual. It is individuals that form our society; not groups of individuals with certain interests that formulate our agenda; not society in some form of abstract conception. Our thesis is and, certainly should be, about a society of individuals; not about a society made out of formless masses of human beings. Our individual is what others have called the ‘citizen’. This comes in agreement with classical constitutional doctrine implying a social contract between the citizen and the State (e.g. Lomasky, 2011, p. 50). In any case, our citizen places man at the centre of his/her analysis. In this perception, liberal society is made out of citizens with anthropocentric aspirations. In this society of individuals, law as an enabling device could flourish.

Beyond this, there is one exception for the State to intervene: while the individual recognises the value of the law and for this reason applies it, on occasion the same individual may not pay recognition to the value of law, in which case the State may have to intervene. Do individuals otherwise recognise the value of law? In the proposed thesis herein, both an individual who breaks the law and an individual who upholds the law may give recognition to the value of the law. The difference is that the individual that upholds the law does so, because he believes in the law. The individual who breaks the law may not respect the law but that is

not to say that he does not recognise the intrinsic value of the law. Upholding the law in every single possible occasion of one's life is one thing and recognising the intrinsic value of the law is quite another. Besides, if a person breaks the law in one instance of his life, is that to say that this person does not recognise the value of the law as a whole? What if that person broke the law at an age before reaching adulthood? Are we to say that this person would not recognise the value of the law in the future? Or, on the basis that we deny this person's recognition of the intrinsic value of the law, would it not be true that our argument would border hypocrisy then? It is clear then that incidents of breaking the law in an instance (with all the consequences that the law brings to its perpetrator) do not change the fact that our societies subscribe to our model of overall recognition to the value of law.

In our societies, the overall respect for the law is the sole unifying nexus of individuals. In other aspects of life, our individuals can be as divided as they may.⁷ Law unites. The life of each and one of us divides us. Respect for the law equals to a society where each and one of us prescribes their life in their own way by respecting that which the law posits for all.

Respect for the law on the part of the individual equals goodness, indeed perfection in our thesis. We do not need to use our imagination in stating that our society of individuals is one that largely takes a uniform approach in respecting the law. In this respect, pluralism does not come into play. If it did, it would open Pandora's box for all sorts of different interpretations in what needs to be upheld and what is not worthy of being upheld. However, pluralism does come into play in the lawmaking processes and in the prescription of each and one's life on an individual basis. Accordingly, whilst pluralism is given full recognition in our thesis, the societal demands from individuals a uniform approach in respecting the law, in that laws have been generated by a majority of individuals (principle of democracy).

Finally, a general duty to obey the State and its laws defines our thesis. Socrates has taught us this sometime ago. One may wish to question and disagree with the State and its organs but one will uphold its laws and its decisions. Besides the fact that one will uphold the law in the first instance does not equate to retreat on the part of our individual. On the contrary, even where our individual is asked to uphold the law, the individual may still judicially examine the decisions of the State. The duty to obey the law in a democratic society by far exceeds the remit of the duty to disobey the law.

CONCLUSION

Legal norm, in precise terms, can restrict but it can, of course, also enable. Where it restricts, however, law may still enable. Law's magnificence is found in its positive force, a force which has been used, for the better, by democracies, and, for the worse, by tyrannies. The point remains: law enables.

REFERENCES

- Abioye, F.T. (2011) Constitution-making, legitimacy and rule of law: a comparative analysis. *The Comparative and International Law Journal of South Africa*, 44(1), 59-79.
- Buckland, W.W. (1945) *Some Reflections on Jurisprudence*. Cambridge: Cambridge University Press.
- Brousseau, E., Sgard, J. and Schemel, Y. (2012) Delegation Without Borders: On Individual Rights, Constitutions and the Global Order. *Global Constitutionalism*, 1(3), 455-484.
- Cotterrell, R. (2008) Images of Europe in Sociolegal Traditions. In: Campbell, T.D. (ed.). *Roger Cotterrell Living Law*. Aldershot: Ashgate.
- Cotterrell, R. (2002) Subverting Orthodoxy, Making Law Central: A View of Sociolegal Studies. *Journal of Law and Society*, 29(4), 632-644.

⁷ Cf. J Rawls, *Political Liberalism* (Columbia University Press, New York 1993) 303-304.

- Cotterrell, R. (1996) The Rule of Law in Transition: Revisiting Franz Neumann's Sociology of Legality. *Social and Legal Studies*, 5(4), 451-470.
- Domingo, R. (2010) *The New Global Law*. New York: Cambridge University Press.
- Green, L. (2001) Pluralism, Social Conflict, and Tolerance. In: Soeteman, A. (ed.). *Pluralism and Law*. Dordrecht/Boston/London: Kluwer.
- Jenks, C.W. (1969) *A New World of Law: A Study of Creative Imagination in International Law*. London and Harlow: Longmans.
- Lee, R.G. (2010) Liberalisation of legal services in Europe: progress and prospects. *Legal Studies*, 30(2), 186-207.
- Lomasky, L.E. (2011) Contract, Covenant, Constitution. In: Frankel Paul, E, Miller Jr, F.D., and Paul, J (eds.). *What Should Constitutions Do?* Cambridge/New York: Cambridge University Press.
- Luban, D. (1994) *Legal Modernism*. Ann Arbor: Michigan University Press.
- McCorquodale, R. (2010) *The Rule of Law in International and Comparative Context*. London: British Institute of International and Comparative Law.
- Ogus, A. (2010) The Paradoxes of legal paternalism and how to resolve them. *Legal Studies*, 30(1), 61-73.
- Rawls, J. (1993) *Political Liberalism*. New York: Columbia University Press.
- Reynolds, N.B. (2005) *Shirley Robin Letwin On the History of the Idea of Law*. New York: Cambridge University Press.
- Sunstein, C.R. and Thaler, R.H. (2003) Libertarian Paternalism is not an Oxymoron. *University of Chicago Law Review*, 70 (4), 1159-1202.

09-CA03-1054

HITTING THE ROAD: A CRITICAL EVALUATION OF THE RELATIONSHIP BETWEEN (AUTO)MOBILITY AND GENDER ROLES IN ECE TEMELKURAN'S TURKISH NOVEL *WOMEN WHO BLOW ON KNOTS*

SIDAL ONER¹

ABSTRACT

It has been acknowledged that the (auto)mobility culture has started with the dominance of male power; yet women have been included in the picture with the effect of modernisation and feminist movements. Not only in Western societies but also in Turkey, being mobile attaches different meanings to men and women. Driving a car or any other transportation vehicle and being on the road have no longer associated with the men but the women have also come out from their cosy, safe kitchens and took their freedom chances by hitting the road either by themselves or with the other women who look for empowerment. The representations of this new female dominant mobility paradigm has been clearly seen in both western and eastern film and literature as well. The purpose of this paper is to explore the interaction between (auto)mobility discussion and gender roles in a specific work from the Turkish literature.

Key Words: (auto)mobility, gender, literature

INTRODUCTION

Since its birth, the automobile has been a vehicle which provides personal mobility. It offers movement on an individual level much more effectively than its predecessors the bicycle or the motorcycle, and it gives a more comfortable option than the public forms of motorized or steam powered surface transport such as the train, the bus, and the electric streetcar. However, now that the car has taken an active role in the development of globalisation in our modern world, millions of cars are manufactured throughout the world and it seems this number will be doubled as the people's desire to be autonomous and to move freely increases. John Urry (2004, p. 25-39) argues that 'the social and technical system of the car constitutes an enormously complex hybrid automobility' and with the excessive manufacture of cars throughout the world, it is indisputable that countries have developed an (auto)mobility culture'. Urry (1999) sees the car and the system of automobility as 'the best exemplification of the development of a putative globalisation', and discusses the starting points of the culture from the USA to Britain and the other European countries who have developed their own automobility cultures during the late 20th and 21st century. Therefore, cars and other mobility vehicles have become signs of national identity since their perception differs from culture to culture.

Turkey, located between Europe and Asia serving as a bridge that connects both continents, has been of great importance for the Western civilisations in terms of geopolitical relations and also for the Middle East as being one of the first secular Muslim countries around the world. Having been founded after the fall of the Ottoman Empire, Turkey stood up as a secular Muslim republic, yet remained in the middle of being both European and Eastern while trying simultaneously to keep Ottoman culture and follow modernisation of the West. Therefore, the concept of mobility which was present in the Ottoman times through phaetons and carriages, has gained fresh meanings with the foundation of the Republic and the inclusion of the Western modernisation. Indeed, with the effect of globalisation, automobility redefined automobiles as fundamental vehicles of twentieth century modernisation, and global integration of Turkey.

¹ Instructor of English, Bursa Technical University, School of Foreign Languages, Turkey. E-mail:- sidal.oner@btu.edu.tr

The combination of automobility studies and the gender roles discussion is a fairly new area for both sides. Under the fact that women have gained more mobility recently the main purpose of this paper is to investigate the representation of gender roles in Turkish novel *Women Who Blow on Knots* (2013) which uses the idea of being on the road by a car and/or other transportation vehicles as a metaphor to transform the four Middle-eastern women protagonists' identities on the journey they set off. This paper will also give an opportunity to dig deeper the effect of the road's therapeutic role on this transformation through a feminist window.

It has been noted that although there are many studies about the Western literature and film that illustrate the effect of automobility culture on social classes and that use the themes about women's being on the road and their weightless mobility, there haven't been any studies pursued about the meanings of automobility and its interaction with the gender roles in the Turkish literature and film as far as the researcher concerned. Moreover, there has not been a study which makes a comparison between the Eastern and the Western perceptions of the matter. This will be a paper both in the Western and the Turkish literature which will focus on the automobility and feminist theories from an eastern viewpoint for a specific work.

PERCEPTIONS OF (AUTO)MOBILITY IN DIFFERENT CONTEXTS

In the broadest sense, (auto)mobility is a kind of mobility which signifies the movement of people from one place to another. In other words, it means being on the road. However, it can be a means of freedom and power as Eyerman and Löfgren (1995, p. 62) state 'to go on the road is to break out of the patterned routine of everyday life, that's why it is liberating'. Urry (2004, p. 28), as quoted in Creswell and Uteng (2008, p. 1) emphasizes 'the need to separate out rather carefully the nature of the five highly interdependent 'mobilities' that form and reform social life, bearing in mind the massive inequalities in structured access to each of these:

1. Corporeal travel of people of work, leisure, family life, pleasure, migration, and escape.
2. Physical movement of objects delivered to producers, consumers, and retailer.
3. Imaginative travel elsewhere through images of places and people on television.
4. Virtual travel often in real time on the internet, so transcending geographical and social distance.
5. Communicative travel through person-to-person messages via letters, telephone, fax, and mobile phone.'

As it has several definitions, the implications of the automobility can be varied in different contexts accordingly. On one hand, they can be seen in disciplines such as social, cultural, geographical, political, etc., on the other hand it is possible to come across with many examples of the automobility in the Western literature and films, especially in American culture thanks to the idea of the American Dream, the dream of a better life promised to Americans. For instance, in the 1930s, during the Great Depression, the idea of moving from one place to another became 'a measure of hope', that 'the road itself seemed to offer a way out and to offer new possibilities, of work, adventure, and romance' giving John Steinbeck's *The Grapes of Wrath* (1939) as the main reference (Eyerman and Löfgren, 1995, p 57). Furthermore Burszta (2016, p 173) says that 'automobile ownership also secured a person's freedom of mobility, giving in to the American dream, securing the rights of mobility finally rid of external control and surveillance'. The other obvious examples of automobility include Kerouac's *On the Road* (1957), and the films, *Bonnie and Clyde* (1967), *Easy Rider* (1969), *Vanishing Point* (1971), *Badlands* (1974), *Lost in America* (1985), *Planes, Trains and Automobiles* (1987), *Rain Man* (1988), *Cohen and Tate* (1988), *A Perfect World* (1993).

In many of the early novels and films made about the automobility culture and its pedagogical effects on people's life, 'it is usually men who have the leading roles, women on

the other hand, must content themselves with rather predictable supporting roles, the motherly or cynical waitress at the roadside diner, the damsel in distress or the seductive hitchhiker' (Eyerman and Löfgren, 1995, p. 65). Thus, we can assume that it was the men and the machines that make the world move. However, in *Thelma and Louise* by Ridley Scott (1991) this male dominant mobility seems to come to an end with the road trip of two women who stand against patriarchy and change the world even a bit with their crazy violations of the law and the nature that has ever been attached to their sex.

Since Luce Irigaray's *Speculum Theory* (1985, p. 416) suggests that women should always be together and they should only have women-only groups to get their sexuality and identity, *Thelma and Louise* become aware of the abstract, symbolic power and independency, and they explore real identity, femininity and sexuality on the road they take. They can be themselves on the road without being under oppression, repression and abuse. They can be themselves performatively. Therefore, Judith Butler's theory of gender performativity will come in question here. As Butler (2006) sees gender as "performative" since it is 'manufactured through a sustained set of acts posited through the gendered stylisation of the body', the fact that the body inside the car or the vehicle has changed and this change brought new insights to the socially constructed roles of the genders creates a broader discussion opportunity for the automobility and feminist studies.

(AUTO)MOBILITY IN TURKISH FILM AND LITERATURE

Since as Çingay (2009, p. 132-147) clearly states 'the transition of public perception in relation to automobile consumption mediated through popular cultural products such as songs and films through the early Republican period to the 1980s highlights the economic, politic and ideological transformation of Turkey', the automobility culture makes an interestingly effective contribution to the formation of Turkish national identity in the contemporary age. The effect of automobility culture and cars as conspicuous commodity can first be seen in Rezaizade Mahmut Ekrem's novel *Araba Sevdası* (The Love of Car, 1896). This novel is also regarded as the first realistic novel in Turkish literature. In general, the novel represents the phaetons as indications of varied social classes within the Ottoman society. According to the protagonist of the novel Mr. Bihruz, the quality of the phaetons gives ideas about their owners' nobility and education level. Aziz Nesin's short story *Medeniyetin Yedek Parçası* (The Separate Part of the Civilization, 1955) and Talip Aydın's *Sarı Traktör* (The Yellow Lorry, 1958) pay attention to the automobiles which are deviated from its major use; they are used either as a fetish object or for showing off. In another novel, *Fikrimin İnce Gülü* (The Fragile Rose of My Thought, 1976) the protagonist Bayram adores his automobile and sees it as a human being and, thus he calls his car *Balkız*, which means "Honey Girl". Within the contemporary contexts, Ayla Kutlu's *Kadın Destanı* (The Epic of Woman, 2004) and Latife Tekin's *Muinar* (2006) may be regarded other novels showing the representations of (auto)mobility.

The status-displaying feature of the automobiles during the 1950s and the 1980s can be traced back to the early years of Green Pine (the acronym for Turkish cinema used until 1980s). For instance, a popular operetta from 1930s, *Lükiüs Hayat* (The Luxurious Life) started the criticism of the exaggeration of Westernisation through imitating "modern" life styles, such as living in apartments and driving automobiles. The film *Sevinç Gözyaşları* (Weeping for Joy, 1965), *Samanyolu* (The Milkyway, 1967), *Umut* (Hope, 1970), *Baba* (The Father, 1971), *Çöpçüler Kralı* (The King of the Street Cleaners, 1978) are some of the examples of automobility culture's impact on the social classes in Turkish society. As conspicuous commodity, automobiles are indicators of being rich and wealthy (Çingay, 2009).

When we come to women-automobile relationship, In *Beklenen Şarkı* (Awaited Song, 1953) the women driver was depicted as too rich and elite, whereas in *Şoför Nebahat* (Chauffeur Nebahat, 1960) and *Sana Dönemeyeceğim* (I Cannot Come Back to You, 1969)

they were shown as too poor, macho and being forced to become a driver in order to survive. Beyond these novels and films from the early and late 20th century to track down the roots and the development of (auto)mobility culture, to be able to understand the changing link between gender roles and the (auto)mobility culture, Ece Temelkuran's *Women Who Blow on Knots* has brought in something new to the contemporary Turkish literature. This novel is regarded as the first women road novel in Turkey, in which four atypically Muslim women are protagonists who strive to find their own independent living spaces. The power of these women find in their inner world is enough to change their male dominant lives. The spirit of sisterhood, like Amazon women is felt among them.

THE REPRESENTATIONS OF (AUTO)MOBILITY AND GENDER ROLES IN THE NOVEL

The main plot of the novel revolves around four women who undertake a perilous journey from Tunisia to Lebanon. It takes place in North Africa and Middle Eastern territories. As usually mobility requires the idea of having somewhere to go, this novel takes the readers to Tunisia, Libya, Egypt and Lebanon as an imaginative travel besides physical mobility. In this sense, Ece Temelkuran's novel can be defined as a multi-layered road story.

The story starts in a hotel in Tunisia where the protagonists see each other for the first time. Maryam, who is an Egyptian academician doing research on the queen of Kartaca of ancient Tunisia, and Amira, a Tunisian belly dancer who would like to open a dance school, stay in the same hotel with Ece, the author of the novel and an unemployed Turkish journalist who comes to Tunisia to refresh herself. After having met each other for a short while, one night these three women are invited for dinner to an old woman, Madam Lilla's house. With this invitation, they have taken a step to her enchanted and mysterious world. Madam Lilla tries to convince them to take a journey with her without giving any reasons. Amira, Ece and Maryam do not make of Madam Lilla's offer at first, yet upon Amira's killing someone accidentally in the bath where she works, they decide to embark on this journey to escape with Madam Lilla without any hesitations. After a while, these young women understand that they set off to kill Madam Lilla's ex-lover, Jezim Anwar, who breaks her heart deeply once upon a time. As a consequence, they find themselves in the deserts of Africa under the leadership of Madam Lilla in an old white Mercedes. Initially the journey seems to be an escape story; however, in the end it turns out to be a big adventure. Driven by the overall generalization what Cresswell and Uteng (2008, p. 5) posit as 'masculinity is coded as mobile and femininity as static', Madam Lilla seems to confute this idea by making these three young women and herself always be on the move in different territories throughout the novel.

As 'anything can happen on the road – and usually does' (Eyerman and Löfgren, 1995, p. 61), in this journey, like a Hollywood thriller, they cross the borders with different kinds of means such as camels, planes, ships and automobiles in an incredible way. Beside her ambitious to take revenge, Madam Lilla aims to have Ece, Amira and Maryam to taste the freedom of movement and make them realize that the power in their inner world is enough to change their male dominant lives. She would like them to regain their lost personal mobility after too many years of being trapped in their lives formed by others', especially men's, demands. After travelling many diverse places, Madam Lilla's strong personality and seeing herself as a goddess inspire Ece, Amira and Maryam day by day. What Madam Lilla does to them is to engrain how to become a goddess of their lives. In one part of the novel, she lists the golden rules of how a goddess should have. She says '(1) never apologize what you haven't done, (2) don't try to over explain yourselves, (3) do not underestimate your success, (4) never begin your speech as 'I may be wrong, but...', (5) never answer to the questions you do not want, (6) don't be afraid to say 'No'; and you will establish the last rule as this is every goddess

own right to do.’ (Temelkuran, 2013, p. 350). These may be noted as a kind of woman manifestation which aims at supporting women unity. Since throughout the novel, as a women solidarity, they wend their ways by leaving their old lives behind to find themselves through hitting the road. Hence it can be said that being mobile and changing territories perpetually give a fresh meaning to their lives in malestream.

When it is examined the relationship between mobility and gender roles, ‘women have constantly upset gendered expectations about who moves, how they move and where they move’ (Cresswell and Uteng, 2008, p. 5). Even so, the recent mobility turn or new mobilities paradigms show that female mobilities seem to overwhelm the popular expression saying ‘good girls go to heaven, bad girls go everywhere’. As compared to male mobilities, according to Hanson (2010, p. 10) female mobilities induce ‘fundamental changes in their views of who they were – in their identities – and to erode traditional gender ideologies and practices’. In this novel these four women have an aim to get free of narratives written by men. As these are their stories which make them exist in patriarchy. In this sense, the road plays a role of catharsis in which one faces with the difficulties and then reaches ultimate self at the end of this journey by securing rid of the constraints, and ending up writing their own narratives. As (auto)mobility is a source of freedom, ‘the freedom of the road’ (Urry, 1999, p. 6), it involves an individualistic timetabling of many instant or fragments of time. ‘Since it coerces people to juggle fragments of time to assemble complex-fragile and contingent patterns of social life, patterns that constitute self-created narratives of the reflexive self. So, it is the reflexive monitoring of one’ self’ (Urry, 2004, p. 29). What Temelkuran says in one of her interviews puts in a good word for this idea. She states that

‘it was the Medieval Age when people take their roads corporeally to search for wisdom and knowledge. Due to the technology, people, in modern times, think that being on the road corporeally is a futile movement to search wisdom and knowledge. But I still think that being on the road corporeally is a valid method to change yourself and find the truth because a person does not weigh the same in every geography. To see how much you weigh in every geography changes your own description and knowledge about yourself. To look at yourself from different geographies show you other selves’ (quoted in Peker, 2013).

Thus the author shows these muslim, middle eastern, revolutionist, and modern women’s ‘physical prowess as a challenge to male dominance, a means of improving on prevailing norms of masculinity and impetus for transforming gender relations’ (Hanson, 2010, p. 10). It has been said that physical mobility brings along the personal mobility. To accomplish one’s personal growth, it is salient to come out of their shells and enjoy the power of the mobility. It is empowering quite simply because these three women alter their geographies, and move both corporeally and mentally to pursue what they believe to change their indoor realm. This having somewhere to go increases their self-confidence, and leads them to challenge gender power structures gradually. For this reason, the characters in the novel are always depicted as being on the move to be autonomous. They write their own stories with a feeling of accomplishment by eluding their confinements.

In this sense, it would not be wrong if Ece, Amira and Maryam are called as Thelma and Louise in the African deserts (Büke, 2013). The end of the film *Thelma and Louise* (1991) challenges the stereotypes. On the contrary to have given themselves over to the police, these two courageous women choose death to preserve their freedom. They have not yielded to what had been dictated them to do until that time. Thelma and Louise changed their world with a very brave decision of driving into the Grand Canyon rather than being imprisoned and dependent in a world of patriarchy. As a consequence of their action, they demolish the nature of the patriarchal society which sees women as always obedient to the life offered to them. They break the chains that maybe nobody has ever dared to do. Hence, they are legend heroines in road movie history. This film has become a turning point in many women’s lives as it has

put them in a situation to think critically whether they would challenge this male dominant system or kill themselves when they confront the same situation as these two women have. It has become a very big issue considered in the feminist history since then. They deconstruct the penetration seen in patriarchal societies. Rejecting the law, Thelma and Louise, approach the possibility of illegal routes of desires. With their crazy violations, they actually propose a new practice which lacks the necessity of female penetration. And all of these actions can be marked as crazy and disoriented.

Similarly, the protagonists in the novel drive towards the world in which they are trapped, and their stories whose end they would like to write as they want win in the end. Being a victim of the hegemony, they begin to have their epiphany with all the outlawries. The road, being a symbol of the path they have to take in their lives to create their characters enable them to reform their way of life. The road becomes helpful in realizing what they have been and what and how they should be. When Irigaray's *Speculum Theory* (1985) is taken into consideration, realizing their *speculum* on this road by being in the nature and isolated from men, they become aware of their identities. Lomasky (1997) states that '(auto)mobility complements autonomy: the distinctively human capacity to be self-directing'. So, we can say that it leads people to draw their ways. It offers people a choice how they want to direct themselves. This choice lies behind self-directing. As she continues to say that since for people, 'there is not only a better or worse but a chosen better or worse toward which they deliberately direct themselves' (Lomasky, 1997).

This novel starts with an adventure. It gives a sense of going nowhere at first; however, with the help of road's therapeutic role, these four women manage to put themselves in the centre of their worlds in accordance with their own desires. They become self-aware and self-mover. They realized themselves in every tragic or funny events of which they become a part. When they found Jezim Anwar to take Madam Lilla's revenge, they understood that this journey was the life itself in the end. They found each missing part of their lives in every adventure they had throughout the novel. Under the guidance of Madam Lilla, they found the courage and strength to change the route of their lives. They moult, in other words, they rise like a phoenix from the ashes as they keep changing their places.

The author herself depicts these four women's journey as a spiritual journey to their inner world as well. In some parts of the novel, the author gives some references from Q'uran. The book's title itself is taken from Felak Surah, one of the surahs of Q'uran. In the eleventh part of the novel, Madam Lilla says 'the life is in our breath' (Temelkuran, 2013, p. 124). When the life is in women's breath, it is normal that love, its adverse effects, women's becoming autonomous and striving to be independent comes to the front of the stage 'because women live in a world in which they blow their love and their magic. Men always demolish this world. On the other hand, women reconstruct what men demolish and 'regenerate men with their breath. A man is as much as a woman's breath' (Temelkuran, 2013, p. 126). Madam Lilla takes to the road to take her revenge from the man who demolishes her world which she creates with her breath, and the other three women take to the roads in order to become themselves, take care of the life seriously in accordance with their desires. These four women start their own new story of their lives at the end of the novel.

CONCLUSION

In conclusion, the complicated relationship of mobility and gender roles is one of the most thought-provoking themes of (auto)mobility studies. Being on the move is undoubtedly a cultural practice, and as such it is open to interpretation grounded in gender studies. The emergence of women on stage shed light on many aspects of mobilities. While taking into account the aims of male and female differences of hitting road, in this context taking on a

journey can mean an adventure as well as to arrive at a place or to research something or to escape from something. Like many other road stories, taking on a journey and being on the move to find oneself is the main theme of this novel. For the author, mobility is completely bound up with the idea of protagonists' finding themselves by hitting the road, and finding the question 'who am I?'. In the end, it is clearly seen that to be courageous is what these four women have had a lot to convert their ordinary and dull way of life to adventurous and free one. Under the light of the idea that women mobilities are different than men mobilities, this novel complements what Willard (1985) quotes 'an ounce of practice is worth a ton of theory' (as quoted Hanson, 2010, p. 6). This optimistic journey towards progress narrates the readers that these women put themselves in the driver's seat from now on.

REFERENCES

- Burszta, J. (2016) Challenging the Hegemony of Car Culture. The Road and Roadside as Cultural Landscape in the United States. In: Kuligowski, W. and Wielichowo, S. (eds.). *Cultures of Motorway. Localities through Mobility as an Anthropological Issue*. Wielichowo: TIPI.
- Butler, J. (2006) *Gender Trouble*. New York: Routledge.
- Büke, A. K. (2013) Afrika çöllerinde Thelma ve Louis'ler. [Online]. *Radikal Kitap*, 02 February 2013. Available from: <http://kitap.radikal.com.tr/makale/haber/afrika-collerinde-thelma-ve-louiseler-351346> [Accessed 8 April 2017].
- Cingay, B. (2009) Automobility in Turkey: A Critical Evaluation of Turkish Automobile Production. *Zaytoon: Journal of the 9th Annual Southwest Graduate Conference in Middle Eastern Studies*, 1(1), 132-147.
- Cresswell, T. and Uteng, T.P. (2008) Gendered Mobilities: Towards an Holistic Understanding. In: Uteng, T.P. and Cresswell, T. (eds.). *Gendered Mobilities*. Burlington, VT: Ashgate.
- Eyerman, R. and Löfgren, O. (1995) Romancing the Road: Road Movies and Images of Mobility. *Theory, Culture and Society*, 12(1), 53-79.
- Hanson, S. (2010) Gender and mobility: new approaches for informing sustainability. *Gender, Place and Culture*, 17(1), 5-23.
- Irigaray, L. (1985) *Speculum of the Other Woman*. United States: Cornell University Press.
- Lomasky, L.E. (1997) Autonomy and Automobility. *The Independent Review*, 2(1), 5-28.
- Peker, B. (2013) *Women Who Blow on Knots*. [Online]. Available from <http://www.baharpeker.com/roportaj/ece-temelkuran/>. [Accessed 17 June 2014].
- Temelkuran, E. (2013) *Women Who Blow on Knots*. İstanbul: Everest
- Urry, J. (2004) The 'System' of Automobility. *Theory, Culture and Society*, 21(4/5), 25-39.
- Urry, J. (2004) Connections. *Environment and Planning*, 22(1), 27-37
- Urry, J. (1999) *Automobility, Car Culture and Weightless Travel: A Discussion Paper*. [Online]. Available from: <http://www.comp.lancs.ac.uk./sociology/papers/Urry-Automobility.pdf> [Accessed 8 April 2017].

11-CA10-1066

COMBATTING PIRATED VCDs/DVDS IN BATAM CITY, INDONESIA: “FACTS AND EXPECTATIONS”ELZA SYARIEF¹ AND RINA SHAHRIYANI SHAHRULLAH²**ABSTRACT**

Piracy levels in Indonesia are among the highest in the world, at an 85-95% range for all industry sectors. Among other Indonesian cities, Batam City remains a haven for pirated VCDs/DVDs. This research analyses the reasons why the people of Batam buy pirated VCDs/DVDs and provides solutions for the effective implementation of the Copyright Law. The research finds that even though most of Batam society understands that pirated VCDs/DVDs constitute a violation of the Copyright Law, they still buy them because newly released foreign movies can be purchased at lower prices. In order to prevent or minimize the copyright infringement, the law enforcers should establish best practice by imposing optimum penalties on the perpetrators. The Batam City government should engage the community to combat the sale and production of pirated VCDs/DVDs by raising public awareness regarding the implementation of the new copyright law and imposing strict penalties on the violators.

Key Words: Pirated VCDs/DVDs, Copyright Law, Batam City

INTRODUCTION

Violations of Intellectual Property Rights (IPR) are still happening and are becoming even more alarming. One of these violations is the production of pirated VCDs/DVDs. Copyright violations in the form of pirated VCDs/DVDs in Indonesia are rampant. The Recording Industry Association of Indonesia (ASIRI) complains that a number of pirated CDs/VCDs containing songs that were hits in Indonesia are circulated publicly without payment of royalties. Pirated CDs/VCDs of Indonesian songs reached 3 million copies and pirated versions of foreign songs reached 120 million copies in circulation in 2002 (Taufiqurrahman, 2003). According to the Chairman of the Recording Industry Association of Indonesia (ASIRI), approximately 237 million songs were illegally downloaded per month or 7 million songs per day in 2015 (Tempo Co. Tekno, accessed 3 April 2017).

In Indonesia, sales of pirated copyrighted works in the optical disc medium of either VCDs/DVDs are conducted blatantly, ranging from the store in the shopping centre (mall) to retail traders alongside the road. This is not surprising considering the huge price difference between the pirated versions and the originals. The price might vary from 1/10 to 1/20 of the original. Besides the price, copying an optical disc does not require any special skills, and only needs a simple computer. Indonesia has suffered greatly from this piracy. The traders might obtain billions of rupiah without paying anything to the state (Sjahputra, 2016).

Among other Indonesian cities, Batam City remains a haven for pirated VCDs/DVDs. It is one of the high circulation areas for pirated VCDs/DVDs in Indonesia. Many original versions have not yet officially been screened in cinemas in Batam City. There are five cinemas in various malls which screen both Indonesian and foreign films. The cinema tickets vary from Rp. 25,000 (twenty-five thousand rupiah or US\$2,5) to Rp. 40,000 (fourty thousand rupiah or US\$7). According to Batam-today (an electronic newspaper in Batam), the price of new pirated VCDs/DVDs in Batam is around Rp. 10,000 (ten thousand rupiah or US\$1). They can easily

1 Universitas Internasional Batam, Indonesia. E-mail:- elzasyarief@elzalaw.co.id

2 Universitas Internasional Batam, Indonesia. E-mail:- rshahriyani@yahoo.com

be found in many plazas and markets (e.g. Plaza Top 100, Plaza Botania, Plaza Mustafa, Nasa Market) in Batam City.

LEGISLATIVE AND THEORETICAL FRAMEWORK

The Indonesian Government has enacted a new Copyright Law, namely Law No. 28 of 2014 to amend Copyright Law No. 19 of 2002. The new Copyright Law is generally favourable to copyright owners. Prior to the enactment of this new law a number of regulations to anticipate and combat intellectual property (IP) piracy, especially with optical products (CDs, VCDs, DVDs), have been issued. They are namely: Government Regulation No. 29 of 2004 regarding High Technology Production Facilities for Optical Discs; the Decree of the Minister of Trade and Industry No 645/MPP/Kep/10/2004 regarding the Provisions on the Importation of Machines, Machinery Equipment, Raw Material and Optical Discs; and the Decree of the Minister of Trade and Industry No. 648/MPP/Kep/10/2004 regarding the Report and Supervision of Companies of Optical Disc Industries. In addition, the Indonesian Government also established the Directorate of Investigation under the Directorate General of Intellectual Property Rights on 30 December 2010 for the purpose of combating IPR infringement in Indonesia. On 4 September 2012 the National Taskforce on Intellectual Property Rights, a team consisting of 13 ministries, police, and public prosecutors, was established by Presidential Decree No. 4 of 2006 to mitigate IPR violations in Indonesia, by distributing posters or banners concerning the prohibition of selling or distributing pirated CDs, VCDs and DVDs and software in several places in Jakarta, namely the Glodok area, Harco Glodok Mall and Plaza Pinangsia. The investigators of the Directorate General of IPR successfully raided one of the producers of pirated VCDs and DVDs located at Plaza Glodok (North Jakarta) on 1 February 2013. The raid was directly led by the Director of Investigations, Moh. Adri, and successfully seized six tonnes of pirated VCDs and DVDs from three locations (Kusumah and Prabawa, 2012). Although Indonesia has a new Copyright Law and has conducted a number of raids against pirated VCDs/DVDs, it appears that their circulation in Indonesia cannot be stopped.

This research adopts the Effectiveness of Law Theory by Soerjono Soekanto. This is because this theory examines the effective implementation of a law since it approaches both law in books and law in actions. Soekanto (2008) asserts that the effective implementation of law is very much influenced by five factors, namely:

1. The legal substance must contain justice, certainty and utility.
2. Law enforcers must be professional and ethical.
3. Legal facilities and means must be supported by good organisation, equipment and adequate finance.
4. Society must act to achieve harmony among its members.
5. The legal culture must contain the common values of society (e.g. the values of morality, sustainability, security and order).

RESEARCH AIMS AND METHODS

This research aims to analyse the reasons that the Batam community buys pirated VCDs/DVDs and provide solutions for the effective implementation of the new Copyright Law. To meet these aims, it has adopted a socio-legal/empirical research method that considers law as a social phenomenon with a structural approach (Saptomo, 2009). Socio-legal research covers research on the identification of unwritten law and the implementation of law, i.e. the effectiveness and impacts of law (Soekanto, 1984). This research focuses on the effective implementation of the Copyright Law against the circulation of pirated VCDs/DVDs in Batam City. The data used by this research was primary data, collected through in-depth interviews (Amiruddin, 2004; Wignjosoebroto, 2002) with students, lecturers, VCD/DVD pirates and the public by using random sampling. In addition, observations at a number of malls which sell these pirated materials were also conducted. Secondary data used by this research focused on Law No. 28

of 2014 as the primary or authorized legal material. It also used secondary legal materials, which were collected from articles, books and other relevant materials on Copyright Law to support the primary legal material (Marzuki, 2008). All the data was analysed based on its content (content analysis) using a qualitative approach to seek answers to the questions (Coutin, accessed July 2016):

1. Why has the Copyright Law not been effectively implemented in Batam City?
2. How can the circulation of pirated VCDs/DVDs be combatted in this city?

RESEARCH FINDINGS

Currently, the circulation of pirated VCDs/DVDs in Batam City is still rampant, even though the Copyright Law governs the activity of piracy and provides heavy penalties. Article 1(24) of the Copyright Law stipulates: “Piracy is the copying of works and/or products related rights with the unauthorized duplication and distribution of goods aimed extensively to gain economic advantage”. Article 113(4) of the Copyright Law emphasizes: “Any person who commits the actions referred to in paragraph (3) and carried out in the form of piracy, shall be punished with imprisonment for ten (10) years and/or a maximum fine of Rp.4,000,000,000 (four billion rupiah)”.

Based on the observations for this research, pirated VCDs/DVDs are not only sold in plazas but also in malls in Batam City, e.g. Mustafa, Top 100, Botania Plaza and BCS and Nagoya Hill Mall. Their sales can also be found along the roads near the plazas. Figure 1 below shows one of the outlets selling pirated VCDs/DVDs.

Figure 1: Sales of pirated VCDS/DVDs



Sellers of pirated VCDs/DVDs can get a 100 percent profit from each sale. Most of the products are obtained from Jakarta and sent to Batam City (Zaimi and Dodo, 2015). Based on the interviews with the sellers of pirated VCDs/DVDs, they all said that the price of pirated ones is not high. It is only Rp.10,000 (ten thousand rupiah or around US\$1) for films and Rp.5,000 (five thousand rupiah or around US50 cents) for songs. Some of them are new films which have not yet been played in Batam City. In addition to ordinary pirated VCDs/DVDs, pornographic pirated VCDs/DVDs can also be obtained in some outlets in Batam City. Barelang police seized 175 pornographic pirated VCDs/DVDs in the area of Jodoh Boulevard (near Top 100 Plaza) on 27 February 2015 (JPNN, 2015). Interestingly, the raids only stopped the circulation of these pirated materials temporarily.

The interviews with the sellers of pirated VCDs/DVDs in Nagoya Hill Mall and Top 100 Plaza revealed that most of the pirated materials contain foreign songs and movies. Only a small number of them are Indonesian songs and movies. According to the traders, during the raids the polices only seized those which contained Indonesian songs and movies. They left the foreign pirated VCDs/DVDs untouched. It is questioned whether the Copyright Law only

protects the Indonesian creations. It should be noted that the Copyright Law does not discriminate between the creations of Indonesian and foreigners as Article 2 of the Copyright Law stipulates: “This law applies to:

- all works and product related rights of citizens, residents and Indonesian legal entities;
- all works and product related rights of people who are not citizens of Indonesia, are not Indonesian residents and do not have an Indonesian legal entity, and the publication of which [works and products] was first made in Indonesia;
- all works and/or product related rights and users of works and/or product related rights who are not citizens of Indonesia or Indonesian residents, and do not have Indonesian legal entity, provided that:
 1. The country has a bilateral agreement with the Republic of Indonesia concerning the protection of Copyright and Related Rights; or
 2. The country and the Republic of Indonesia are parties or participants in multilateral agreements giving the same protection regarding Copyright and Related Rights.

It should be noted that Indonesia joined the World Intellectual Property Organization in 1979 and has become a member of the WIPO treaties; consequently, the Copyright Law is applied to non-Indonesians whose countries are WIPO members. The management of malls and plazas, where the pirated VCDs/DVDs are sold, does not take any action to stop their circulation even though they know that the Copyright Law prohibits it. Article 10 of the Copyright Law stipulates that: “Business trading places are forbidden from allowing the sales and/or duplication of goods that infringe Copyright and/or related rights in a trade under its management”. This Law also imposes sanctions as Article 114 of the Copyright Law stipulates: “Every person managing a place of trade in all its forms, who deliberately and knowingly allows the sale and/or duplication of goods that infringe Copyright and/or related rights in a trade under its management, as referred to in Article 10, shall be punished by a fine of Rp. 100,000,000,00 (one hundred million rupiah)”. Buyers of pirated VCDs/DVDs are not merely adults, as minors are also consumers even though their parents buy the pirated copies for them.

Many consumers of these pirated materials are educated people. Forty-eight law students randomly chosen for the interviews revealed that all of them (48 students) have bought pirated VCDs/DVDs at plazas (15 students), malls (23 students) and on the streets (10 students). The students all understand that the pirated products infringe the Copyright Law as it is shown by Table 1.

Table 1: Law students’ attitudes to pirated VCDs/DVDs

Question	Response
Have you ever bought pirated VCDs/DVDs?	Yes (48)
Where do you buy them?	Plaza (15) Mall (23) Street (10)
Do you know that pirated VCDs/DVDs are an infringement of the Copyright Law?	Yes (48)

Source: Data analysed by authors

In-depth interviews with five university lecturers also revealed that they know about the sales of pirated VCDs/DVDs in many areas in Batam City. Some of them have bought pirated

copies even though they are not regular customers. They also know that the sales of pirated products violate the Copyright Law, but they do not take action against it. Random interviews with 24 citizens from various areas of Batam City revealed that only three respondents said they have never bought pirated VCDs/DVDs. The others said they bought pirated VCDs/DVDs in malls (10 respondents), plazas (5 respondents), streets (8 respondents). Table 2 shows the responses of Batam City citizens regarding pirated VCDs/DVDs.

Table 2. Batam City citizens' responses to pirated VCDs/DVDs

Question	Response
Have you ever bought pirated VCDs/DVDs?	Yes (21) No (3)
Where do you buy them?	Plaza (5) Mall (10) Street (8)
Do you know that pirated VCDs/DVDs are an infringement of the Copyright Law?	Yes (24)

Source: Data analysed by authors

Today, Batam City society has a tendency to buy pirated VCDs/DVDs on the grounds that the price is very cheap compared to the original product. 80 respondents (48 students, 24 Batam City citizens, 5 lecturers and 3 sellers) from various economic backgrounds, levels of education and gender were asked the question: "Why do you or people tend to buy pirated VCDs/DVDs?" Seventy-five respondents answered that the price of pirated VCDs/DVDs is very much cheaper than original ones. Pirated VCDs/DVDs especially films cost only Rp. 10,000 (ten thousand rupiah or US\$1), whereas the original versions are Rp.100,000 (one hundred thousand rupiah or US\$10). Five respondents answered that they can enjoy the newest movies or latest music albums which are not yet circulating officially in Batam City. Films that have not been screened in cinemas can be purchased easily at most shopping malls, plazas and streets in Batam City. Seventy respondents said that today a lot of pirated VCDs/DVDs have a good quality picture and sound. The most frequent comment from the public consumers of pirated VCDs/DVDs in Batam City are: "We are looking for pirated VCDs/DVDs because counterfeit goods are sold at a much cheaper price. After all, the picture and sound quality is not much different from the original ones".

DISCUSSION

A. Analysis of the effective implementation of the Copyright Law

As mentioned previously that the Effectiveness of Law Theory by Soerjono Soekanto states that the effectiveness of the implementation of law is very much influenced by five factors, namely the legal substance, law enforcers, legal facilities and means, society behaviours, and legal culture. The first factor provided by this theory examines the substance of the legal instruments. In this regard, it is questioned whether the Copyright Law meets the requirements of justice, certainty, and utility. The answer is affirmative since the substance of this Law clearly states: "The developments in science, technology, art and literature have been so rapid that increased protection and a guarantee of legal certainty are required for the creators, rights holders and owners of related rights". This statement meets the requirements of the justice and

certainty of a legal instrument. This Law further states: “Indonesia has been a member of various international agreements in the field of copyright and related rights but further implementation is required in the national legal system so that the national creators are able to compete internationally”. This statement manifests the utility of a legal instrument. The substance of the Copyright Law among other things covers the protection of copyright and related rights, economic rights, traditional cultural expression and creation, the limitations of copyright, licences, costs, dispute resolutions and penalties. In general, the substance of the Copyright Law is favorable to copyright owners. On this point, it can be said that from a legal substance perspective, the Copyright Law complies with the requirements of justice, certainty and utility.

The second factor influencing the effective implementation of law according to the Effectiveness of Law Theory is that the conduct of law enforcers (police, prosecutors, judges and lawyers) must be professional and ethical. In conjunction, it is obvious that the professionalism of law enforcers, especially the police in Batam City, in acting against the circulation of pirated VCDs/DVDs is questionable. Based on the interviews with the sellers of pirated VCDs/DVDs, it was found that law enforcement in this regard in Batam City occurs sporadically and only focuses on Indonesian pirated products. This indicates the absence of the will of law enforcement to act on the Copyright Law. It is even dilematic because the sales of pirated VCDs/DVDs are sometimes conducted in front of law enforcers. For example, plazas and malls which sell pirated VCDs/DVDs are located not far from police stations. It seems that copyright infringement, particularly the sale of pirated VCDs/DVDs is a common offence in Batam City. Yet no serious action is being taken by law enforcement on the copyright violators (sellers and the management of retail places). In general, the Indonesian court system is also weak in enforcing the Copyright Law. The weakness of prosecutors in Batam City is that their familiarity with the Copyright Law matters is still inadequate. In addition, it is considered difficult for the police and prosecutors to present evidence (International Intellectual Property Alliance Report, 2003). Judicial orders to destroy seized pirated VCDs/DVDs have often been ignored and the court proceedings are costly and lengthy. The law enforcers, especially the police, who are obliged to combat Copyright Law infringements in connection with the circulation of VCDs/DVDs in Batam City are not professional. Their discriminatory attitudes towards Indonesian and foreign pirated VCDs/DVDs indicate that they do not fully understand the substance of the Copyright Law and how to consistently implement it (Hidayah, 2008).

The third factor under the Effectiveness of Law Theory which must be met for the effective implementation of law is adequate legal facilities and means. Irregular and unsustainable raids against pirated VCDs/DVDs in Batam City indicate that there is a lack of facilities and means to combat this piracy. Good organization of law enforcement is also a main condition to achieve the effective implementation of law based on the Effectiveness of Law Theory. This is not fully met in Batam City. According to the report of a Haluan Kepri journalist (Kepri, 2014), the distributors of pirated VCDs/DVDs in Batam City with the initials YH and ACN can be easily found in the area of Nagoya Hill Mall and Botania Plaza. It was reported that the distributors have bribed certain police to allow them to conduct this illegal business. The businessman with the initials ACN, whose business is located behind DC Mall, confessed that he has “secured” his pirated VCD/DVD business by bribing certain relevant stakeholders. In addition, there is a lack of intensive coordination between the police and civil servants under the Directorate General of Intellectual Property in seizing pirated VCDs/DVDs in Batam City. This failure to meet the third factor of the Effectiveness of Law Theory may contribute to the ineffectiveness of implementing the Copyright Law in Batam City.

The fourth factor stipulated by the Effectiveness of Law Theory is society’s actions against a legal instrument. In this regard, it is apparent that most of Batam City society is not obeying the implementation of the Copyright Law. This is manifested by the conduct of society

in buying pirated VCDs/DVDs, even though they know that it is against the Copyright Law, simply because the price of the pirated ones is much lower than the original ones. The option to buy pirated VCDs/DVDs in Batam City is not merely because of the economic conditions of buyers. People in the middle and even upper economic classes in Batam City also buy them (Lamaberaf, 2015). Both educated and non-educated people buy them on the grounds that the films have not been screened in Batam City. People in Batam City still consider that it is a common practice to buy pirated VCDs/DVDs. They even opine that the producers and retailers do not commit any crime as long as the pirated ones are not Indonesian products or pornographic films. This thought is derived from the actions of the police who only seize the Indonesian and pornographic pirated products. The ignorance of the police regarding foreign and non-pornographic pirated VCDs/DVDs contributes to the peoples' acceptance of the pirated goods in Batam City. The sellers even argued that: "the distributors of pirated goods in the Nagoya area of Batam City must be arrested instead of seizing the pirated goods of small retailers" (Zaimi, 2016).

The fifth factor under the Effectiveness of Law Theory is the legal culture of a society. In this regard, the Theory stipulates that there should be common values in society regarding morality, sustainability, security and order for the effective implementation of a legal instrument. Based on the empirical research, it is clear that most of Batam City citizens understand that pirated VCDs/DVDs infringe the Copyright Law, yet they demonstrate skeptical attitudes toward the circulation of pirated VCDs/DVDs in Batam City. They are even permissive towards copyright infringements due to a lack of serious action taken by the legal enforcers. Abdussalam (2007) states that violations of norms frequently occur in society because of "too much tolerance towards legal violators, ignorance of legal offenses, and disrespectful attitudes of certain legal enforcers which taint the good image of the entire legal enforcement". It is obvious that the situation identified by Abdussalam occurs in Batam City today. It seems that the society of Batam City has shifted its perceptions regarding pirated VCDs/DVDs because the people consider that pirated VCDs/DVDs are illegal only if they are classified as pornographic or are Indonesian productions. This may be true because they do not make any effort to stop the circulation of pirated VCDs/DVDs. On the contrary, they buy them for different reasons and consequently their circulation is mushrooming in Batam City.

B. Proposed actions to combat the circulation of pirated VCDs/DVDs

Based on the analysis of the implementation of the Copyright Law in Batam City, it can be deduced that the ineffective implementation of the Law is caused by four factors under the Effective Law Theory, namely:

1. Law enforcers are not professional in tackling the circulation of pirated VCDs/DVDs.
2. Legal facilities and means of supporting the raids and seizure of pirated VCDs/DVDs are not adequate.
3. Society has different perceptions regarding pirated VCDs/DVDs, since only those of Indonesian productions or pornographic films are considered to be an infringement of the Copyright Law.
4. The legal culture of Batam City society is skeptical and permissive of the copyright infringements due to a lack of serious action being taken by legal enforcers.

It is obvious that among the five factors stipulated by the Effectiveness of Law Theory, only the first factor, namely the legal substance of the Copyright Law, supports the effective implementation of this Law in Batam City. At this juncture, this research proposes several solutions which may improve the effective implementation of the Copyright Law in Batam City. The solutions, given are based on the approaches of the Effectiveness of Law Theory, are presented by Table 3.

Table 3. Proposed solutions to improve the effective implementation of the Copyright Law

Factors impeding the effectiveness of the Copyright Law	Proposed solution for the effective implementation of the Copyright Law
The lack of professionalism of law enforcers in tackling the circulation of pirated VCDs/DVDs.	<p>Raids against the circulation of pirated VCDs/DVDs should be conducted regularly, without any discrimination towards foreign songs or films.</p> <p>Regular dissemination of the Copyright Law to legal enforcers, either by conducting workshops and seminars or by posting posters and banners as reminders in their offices.</p> <p>Judges who handle the Copyright Law or any Intellectual Property Rights (IPR) cases must have the courage to strictly implement the IPR laws in their decisions. They should establish a best practice by imposing optimum penalties on the perpetrators.</p>
Inadequacy of legal facilities and means to support the raids and seizure of pirated VCDs/DVDs.	<p>Imposing heavy penalties on any stakeholders who support the circulation of pirated VCDs/DVDs.</p> <p>Conducting regular coordination between the police and civil servants of the Directorate General of Copyright in seizing pirated VCDs/DVDs.</p> <p>Establishing a partnership between law enforcers, the community, the government and businessmen [retailers] or industries to combat the production and sale of pirated VCDs/DVDs.</p>
Different perceptions of society in its approach to pirated VCDs/DVDs.	<p>Raising public awareness regarding the implementation of the Copyright Law.</p> <p>Applying sanctions on the sellers and the management of trading places that sell pirated VCDs/DVDs.</p>

Skeptical and permissive legal culture of society towards copyright infringements.	Educating the people of Batam City that buying pirated VCDs/DVDs supports crime.
	Campaigning with the slogan of “Circulating or selling pirated VCDs/DVDs is a crime with heavy penalties”.

Source: Data analysed by authors

The proposed solutions in Table 3 emphasise not only the improvement of legal enforcement and but public awareness is also required for the effective implementation of the Copyright Law in Batam City. Public awareness is very significant in combating the production and sale of pirated VCDs/DVDs because, in the absence of public demand for the pirated goods, their sale or circulation could be stopped. This approach is supported by Arief (1998) quoting the opinions of Taft and England which explain that law is a means of social control, therefore customs, group support and/or pressure, as well as public opinion can be more effective in regulating people’s conduct than legal sanctions.

CONCLUSIONS

Violations of Intellectual Property Rights (IPR) especially copyright in Batam City keep occurring due to the weaknesses of Copyright Law enforcement by those responsible. In addition, a lack of public awareness relating to the implementation of the Law contributes to the increase in sales and circulation of pirated VCDs/DVDs in this city. In order to combat infringements of the Copyright Law, it is a challenge for law enforcers to educate people in Batam City to not support this crime by buying, selling and circulating pirated VCDs/DVDs. At the same time, law enforcers and their organizations must improve their performance in combating pirated VCDs/DVDs by conducting regular raids and seizures at malls, plazas or streets where pirated goods are sold. The Copyright Law must be made familiar to law enforcers and the public in Batam City in order to abolish the bad reputation of the city as a haven for pirated VCDs/DVDs. This label taints the reputation of the city which may discourage foreign investors.

REFERENCES

- Abdussalam, R. (2007) *Hukum kepolisian sebagai hukum positif dalam disiplin hukum*. Jakarta: Restu Agung.
- Amiruddin, A.Z. (2004) *Pengantar metode penelitian hukum*. Jakarta: PT. Raja Grafindo Persada.
- Arief, B.N. (1998) *Beberapa aspek kebijakan pengakan dan pembangunan hukum pidana*. Bandung: PT. Citra Aditya Bakti.
- Badan Pengusahaan Batam (2015) *Tourism*. [Online]. Available from: <http://www.bpbatam.go.id/ini/tourism/market.jsp> [Accessed 15 July 2016].
- Hidayah, U. K. (2008) *Penanggulangan pelanggaran hak cipta terhadap pembajakan CD/VCD (Studi Kasus di Jawa Tengah)*. Tesis Program Magister Ilmu Hukum. Semarang: Universitas Diponegoro Semarang.
- Haluan Kepri Newspaper (2014) *Maraknya DVD/VCD bajakan di Batam, polisi belum bertindak*. [Online]. Available from: <http://www.haluankepri.com/batam/57934->

- maraknya-dvdvcd-bajakan-di-batam-polisi-belum-bertindak.html [Accessed 14 July 2016].
- JPNN Newspaper (2015) *Patroli malam, polisi sita ratusan vcd film dewasa*. [Online]. Available from: <http://www.loveindonesia.com/news/en/news/detail/592702/patroli-malam-polisi-sita-ratusan-vcd-film-dewasa-jpnn.com> [Accessed 15 July 2016]
- Kusumah, J. P. and Prabawa, E.A. (2012) *Anti-Counterfeiting committee report Indonesia group*, Asian Patent Attorneys Association 62nd Council Meeting. Hanoi, Vietnam October 19 - 22, 2012.
- Lamaberaf, A. (2015) *VCD dan DVD bajakan bebas beredar di Batam*. [Online]. Available from: <http://batam.tribunnews.com/2015/03/11/vcd-dan-dvd-bajakan-bebas-beredar-di-batam> [Accessed 14 July 2016]
- Marzuki, P. M. (2008) *Penelitian hukum*. Kencana: Jakarta.
- Saptomo, A. (2009) *Pokok-pokok metode penelitian hukum empiris murni sebuah alternative*. Jakarta: Universities Trisakti Press.
- Sjahputra, I. *Principle of "fair use" is not a justification for piracy*. [Online]. Available from: <http://imansjahputra.com/articles-and-publications/r/principle-of-fair-use-is-not-a-justification-for-piracyor-piracy> [Accessed 14 July 2016].
- Soekanto, S. (1984) *Pengantar penelitian hukum*. Jakarta: UI Press.
- Soekanto, S. (2008) *Faktor-faktor yang mempengaruhi penegakan hukum*. Jakarta: PT. Raja Grafindo Persada.
- Taufiqurrahman (2003) *Legislation not sufficient to combat piracy*. [Online]. Available from: <http://m.thejakartapost.com/news/2003/02/24/legislation-not-sufficient-combat-piracy.html> [Accessed 15 July 2016].
- Tempo.Co. Tekno Magazine (2015) *Dalam setahun, 2,8 miliar lagu diunduh ilegal di Indonesia*. [Online]. Available from: <https://tekno.tempo.co/read/news/2015/05/19/061667410/dalam-setahun-2-8-miliar-lagu-diunduh-ilegal-di-indonesia> [Accessed 3 April 2017]
- Wignjosoebroto. (2002) *Pengantar metode penelitian hukum*. Jakarta: PT Raja Grafindo Persada.
- Zaimi. H. and Dodo (2015) *VCD/DVD bajakan kembali marak di Batam*. [Online]. Available from: <http://www.batamtoday.com/berita5861-VCD/berita51033-Awas,-Wisata-Seks-Anak-Mulai-Marak-di-Kepri.html> [Accessed 15 July 2016].
- Zaimi (2016) *Bisnis VCD bajakan menjamur di Batam, polisi terkesan tutup mata*. [Online]. Available from: <http://www.batamtoday.com/berita37134-Bisnis-VCD-Bajakan-Menjamur-di-Batam,-Polisi-Terkesan-Tutup-Mata.html> [Accessed 14 July 2016].

13-CA27-1057

CEDAW RESERVATIONS WITH REFERENCE TO SHARIASIMRAN PARIKH¹**ABSTRACT**

The incongruity between the terms 'Women's Rights' and 'Islam' is well known in the present day's discourse on women. Nations following Islamic law (*Sharia*) refused to accept the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), a UN General Assembly's treaty. The Sharia followers consider it the rightful body of justice in the Islamic society and disagree with the CEDAW motives regarding gender equality. While few countries exercise *Sharia* stringently, others apply a moderate form however still lacking a proper justification. This has prompted the need for a thorough investigation.

The paper attempts in understanding reservations of the Islamic nations towards CEDAW; varying interpretations of the *Sharia* which seems to confute many reservations; Discussing few Islamic nations reflecting different range of applications of *Sharia* at the domestic level; and international consensus between the Islamic law and CEDAW.

Key Words: Women, *Sharia*, CEDAW, interpretation

INTRODUCTION

In this era of liberalisation, while most scholars believe that a set of laws based on secularism is the key to secure gender equality, some consider Islamic laws to be necessary to safeguard women's rights. This conflict of ideas is prevalent in the contemporary period, where nations following Islamic law (*Sharia*) have refused to comply with the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), a treaty often termed as an International Bill of Rights for women, passed by the United Nations General Assembly.

Post World War II, human rights became a crucial topic on a global stage, and as a result, an international human rights treaty was formed. It included some aspects of gender equality, but in a relatively limited form. As a result, CEDAW was formed to handle this issue exclusively. (Farhoumand-Sims 2009) While the objective of CEDAW treaty revolved around gender equality and protection of human rights, Sharia Law was formed originally as a guidance to the way of living and provide a body of justice to the Islamic society. Moreover, this conflict was intensified when CEDAW added the provision of 'reservation' for the state parties, a tool allowed to be used by the state parties in times of disagreement with certain articles of the convention. Several Islamic nations imposed reservations on the convention laws by claiming that certain rights mentioned in CEDAW were not at par with the Islamic set of laws. However, the lack of proper justification to their arguments has prompted the need for thorough investigation into the debate of CEDAW versus Sharia. The objective of this paper is to highlight the chief reasoning behind the reservations by some Islamic nations, and deliver a few facts suggesting that a compromise between CEDAW and Islamic Nations is possible.

The paper begins with the briefing of the CEDAW treaty law and its importance in today's world with respect to its provision of Reservations. As the paper progresses, few aspects of Islamic Law are explained to give a brief idea about the Islamic religion and its legal system and rules. This intends to highlight core problems residing in the entire structure of regulation that causes conflict with the international CEDAW treaty i.e. Freedom of Interpretation. To

¹ B.A Hons., School of Liberal Studies, Pandit Deendayal Petroleum University. India. E-mail: simranparikh23@gmail.com

substantiate the argument, the paper further discusses few cases of Islam-majority countries such as Saudi Arabia, Turkey and Tunisia with each case reflecting different applications and impositions of Sharia Law at domestic level; and international consensus between Islamic laws and CEDAW followed by few concluding comments at the end.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Women have often been treated as second class citizens, and thus, have faced tremendous amount of discrimination by political, civil, economic, cultural and social communities over the years. Hence, a standard international human rights law was exclusively required for supervising this milieu. The UN General Assembly established CEDAW in 1979, with an objective to abolish inequality and discriminatory behaviour on the premises of sex, and to attain full development for women globally with the help of 16 articles and 28 general recommendations. Defining discrimination against women, the convention states: "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."(UN Women, 2009)

With the help of its significant global influence, CEDAW aims to align the existing states' legislation with the principles of its treaty. This means that the states are legally bound to safeguard and achieve women's rights. (Womens UN Report Network, 2011)

CEDAW's Reservations

Vienna Convention on the Laws of Treaties in 1969 added a convolution to the efficient implementation of this treaty, with the provision given to the state parties for marking 'reservations' on accepting certain articles of the treaty which the states find incompatible with their respective national law, culture or religion. (United Nations, 1969) Thus, the states were given permission to ratify an international treaty and yet refuse to be bound by certain provisions.

The Vienna Convention still dispenses that reservations should not be made incongruent with the object and purpose of the treaty. However, this provision gives rise to many doubts, as the Vienna Convention does not define "object and purpose," nor does it indicate which entity has the supremacy to determine legitimacy and validity. (Freeman, 2009)

Out of 195 nations, 187 have ratified the treaty. However, many have raised reservations against few articles, especially those nations which are bound by the Islamic Sharia law, posing a significant conflict with the alignment of this treaty on the grounds of religion. Certain reservations are a particular threat to universality of human rights.²

Articles 2 and 16 are the most vital components of this convention, giving an impetus to its principles and goals. Thus, putting a reservation on them would nullify the purpose of this setup. (Schöpp-Schilling, 1999) Moreover, article 16 still remains the most debated instrument of law in the Islamic world, and about ten state parties have marked reservations on it. Many of them have justified their decision by stating that all provisions of the treaty are not in congruence with the legislation of Sharia. (Freeman, 2009).

Article 16 states:

1. "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women."(UN Women, 2009)

² Human Rights Committee, General Comment No. 24 on Reservations, CCPR/C/21/Rev.1/dd.6 (November, 1994), republished as HRI/GEN/1/Rev.6.

Reservations of this indicate the prevalence of patriarchy in the respective communities till date. Lack of equal rights in terms of inheritance and property distribution impugns the basic subject of justice. Thus, it leaves a woman with the possibility of facing indigence upon her husband's death or while filing for divorce.³

2. "The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory" Later Polygamy was also added as a violation under this article. Reservation to this particular article can pose a danger to the health and development of a girl as it raises serious doubts on the adherence of states in dealing with child marriages. Child marriage denies the fundamental rights of education and safety to a girl who is unwillingly pulled out of school to become a child bride. Moreover, polygamy is an evident unfair practice for the society that could psychologically injure the offspring as well. (UN Women, 2009)

The committee has constantly insisted the governments to take back their reservations, especially the one concerning article 16. The committee attempted to convince Saudi Arabia in withdrawing its general reservation but in turn Saudi Arabia argued that it was under no obligation to follow any terms of the treaty that were incompatible with the Islamic law, 'particularly in light of the fact that the delegation assured that there is no contradiction in substance between the Convention and Islamic *Sharia*' (Rumminger, Moussa and Anwa 2012). Article 2 of the convention insists that the state parties make alterations in the law system and policies specifically pertaining to discriminatory nature of gender in order to implement CEDAW. Reservation to this article subverts the inclusiveness of this treaty and does not allow the practical realisation and actualisation of the motives of this convention.

The reservation to any part of Article 2 is very problematic, regardless of the motivation for it. (Womens UN Report Network, 2011)

CEDAW treaty's general recommendation 28 declares clearly that reservations on Article 2 and 16 confront the objective and purpose of the treaty. This poses as an actual problem for most of the Islamic Nations which are unwilling to comply with these provisions, and thus, refusing to be a part of the revolution against the violation of women rights.

AMBIGUITY IN THE METHODOLOGY OF INTERPRETATION

Jamal J. Nasir highlights, "the wording of a Quranic ruling is either conclusive and binding (*qati*) . . . or contingent (*zanni*)." According to him, the interpretation of these verses can be done literally or metaphorically. Thus, by looking from this perspective one can learn that the differences between the ideologies within Islam exist due to the broadness of Quranic verses which potentially leaves a scope for interpretation.⁴

This segment will focus on understanding the Islamic Law in brief and reflect its consequential influence on the matter of Women Rights. In order to do that, it is necessary to learn some significant Islamic terms. The Islamic law as a whole is based on exceptionally complex components, leaving room for varied interpretations. (Mayer, 1998)

The two main sources of Islam are 'Quran' and 'Sunna'. While Quran is a text comprising of God's words to Prophet Mohammad, 'Sunna' is an ideal mode of conduct consisting of the sayings, acts and suggested consent of the prophet. Furthermore, Sunna comprises of three components: 1. Mutawater, which was directly passed on to the reliable spectators; 2. Mash-hoor, a firm legislative reference formed by "a link in the chain by which it is handed down", leaving room for higher possibilities than certainty; and lastly 3. Khabar Al-Ahad, which was

³ 27 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 521 U.N.T.S. 231, entered into force Dec 9, 1964.

⁴ Jamal J. Nasir, *The Islamic Law of Personal Status* 20 (Graham Trotman 1990) (1986).

conveyed by a single narrator distinctly, thus relying on an individual school of thoughts. In order to put these laws into practice, Sharia comes into the picture. Sharia, in a literal sense, means a guidance or pathway to follow Islam. It is basically a single component consisting of all of Allah's instructions as a whole. The method of inferring and then exercising Sharia's principles into the practical world or hypothetical situations is called 'Fiqh'. However, the actual sayings of the Prophet can be interpreted diversely depending on varied perspectives and schools of thought, thus making 'Fiqh' the most controversial component of the Islamic Law. Ijma, Qiyas and Istiyan are other sources of Fiqh. Ijma means consensus. When there is a confusion in terms of interpretation process, various learned Muslim scholars come together and bring the case into a mutual agreement. If at all mutual consensus is not able to be brought, then there exists another form of legislative source called 'Qiya', which directs the process of making an analogy between two similar cases. (Abdul-Haqq, 2006)

Islam consists of a significant school of thought called 'Sunna'. There are, however, variations in the Sunna School of thought, resulting in to four significant schools of thoughts from the interaction between the given text and its interpretation (Hallaq, 1999).

1. Hanafi School of thought, mainly observed in Ottoman empire, Syria, Iraq and Egypt, is based on the tool of 'qiya', which means legal process of deduction based on analogy.
2. Shafei based on istislah, which means public interest, is an independent methodology of Islam from Quran and Sunna.
3. Maliki School is based on the customs of the caliph Umar, and is hence based on the people of Medina, Saudi Arabia, the home to Mecca and thus, the origin of the Islamic religion.
4. Hanbali School is based on Musnad, which is mainly a collection of the Prophet's sayings or Hadiths. This ideology is very prevalent in Kuwait, Saudi Arabia and Gulf States.

Thus, this basic understanding of the methodology of Islam attempts to draw a picture on how intricate the entire structure is. Therefore, consequentially, it has given birth to a large amount of vagueness in terms of interpretation. The provision of 'Fiqh' is nearly based on human reasoning and interpreting the mechanism of Islamic laws, and although it is based on sacred principles articulated by Allah, it is still considered to be a flexible tool. Other sources are also based on consensus, public interest, human reasoning and custom, which obviously modify with the changing times. Moreover, Quran is a source that conveys the basic standards of behaviour for the Muslim community, but by no means does it demonstrate them as an uncompromising duty (Hallaq, 1999). And using this instrument of flexible interpretation, one can hope to reach a more progressive position for women in this community, and an eventual compatibility between the Islamic legislation and the international benchmark for women rights. When the issue of slavery was identified later as an unfair activity by the Islamic culture, the resolution of the fiqh was utilised, and consequentially, many laws were framed accordingly. Hence, the same can be applied as well when it comes to women's rights in Islam, and the scenario of varied interpretations can be used as a viable tool to promote women's rights instead. (Rumminger, Moussa and Anwa, 2012)

Most of the laws that are rigidly followed by Islamic nations today were formed in medieval times in accordance with the socio-economic and customary traditions of that period. However, after all these years, some people continue to follow them stringently in order to maintain the culture and stay true to their interpreted religious norms. But these people fail to realise that those laws were built by the scholars according to their surrounding environment, and therefore, the interpretation using the fiqh was also according to that period. The concept of gender equality and women rights did not particularly exist at that time and the existence of the patriarchal system was nearly ubiquitous. (Rumminger, Moussa and Anwa, 2012)

Therefore, the difference between the outdated legal framework and modern reality has given rise to inequality and injustice in the wide part of Muslim community. Also, one must not forget that the Quran promotes justice, and it was one of the earliest sources to condemn

the pre-Islamic Arabia which was responsible for degradation of women's status in the community. While England identified women rights on property in 1882, Islamic culture had identified them much earlier, hence making it more progressive than the western nations that discussed this matter much later. Muslim women back then had the right to own property, divorce and even be a legal personality. It is said that Khadijah, Prophet Muhammad's wife, was a self-sufficient business woman and the Prophet was very much in support of it.

CASE STUDIES

Most Islamic nations have marked reservations on some CEDAW core articles on the grounds of religion based *Sharia* Islamic law. However, there is a certain prevalence of disparity between the intensity of implications of these Islamic laws in different nations. While Tunisia has a very progressive take on most of the women rights laws, Kuwait still possess a very unfair policy framework regarding the voting rights of women. Similarly, due to the presence of the Taliban rule, women in Afghanistan are even denied basic school education and working rights. However, Morocco, a nation with largely Muslim population, brought major transformations in their family laws in 2004, abolishing many gender based discriminatory components, and claiming that Islam is a religion of justice and equality. A Moroccan-based women's democratic association (ADFM) initiated the formation of 'Collectif 95 Maghreb Egalité' i.e. Collective 95- For Equality in the Maghreb (A region consisting of nations like Morocco, Tunisia and Algeria). This association managed to bring a revolution of the policies regarding women in these regions. This segment will attempt to highlight this discrepancy between the approaches used by Islamic nations on women rights and their stand on the reservations of the CEDAW laws. This section will use Saudi Arabia as a case that has a stringent approach, and also discuss Islamic nations like Tunisia and Turkey, which have a very progressive, liberal and relatively modern outlook on women's stand in the society, and their stand on reservations of CEDAW.

Saudi Arabia

Islamic nations can be divided into categories based on the intensity with which they follow the *Sharia* Law. While some nations have a liberal approach towards these laws based on their perspective of the interpretation of *Sharia* and the approach of the legal system, some nations follow these laws in an extremely rigid and oppressive manner such that the place of gender equality is dubious. Amongst these, Iran and Sudan have not even ratified the CEDAW treaty, but Saudi Arabia stands as an exception in that case.

The incompatibility of the ideologies of CEDAW and Saudi Arabia has made Saudi Arabia a very interesting case in this subject matter. Despite the ratification of the treaty on paper, in practice Saudi Arabia continues to endorse gender discrimination by posing several reservations to the convention articles. Saudi Arabia follows Hanbali School of Thought, which is based on a pure and literal sense of the Quranic verses, thus negating the ideologies of freedom of speech and independent opinions. The Ijtihad (mode of interpretation) does not have a significant position in Saudi Arabian understanding of Islamic law system, which is eventually applied as a form of constitutional framework by the government. It has held reservation on the Article 9 (Paragraph 2), which talks about giving equal rights to women as men in case of their offspring's nationality; as well as Article 29 (Paragraph 1) concerning with the dispute over interpretation of application of a gathering between state parties. Saudi Arabia has also declared that it will not comply with any convention article which is not in congruence with the Islamic *Sharia* law. Hence, it continues to observe prohibitive policies under this subject.

Women do not have voting or driving rights in Saudi Arabia, and they are not even permitted to apply for certain educational fields such as engineering and politics, which they

believe are suitable only for men (Warren, 2008; Jean and Mimi, 2010). Furthermore, non-governmental organizations (NGOs) which help make additional reports on the performances of a state emerged as a significant factor in the positive functioning of CEDAW; however, this could not be possible in the case of Saudi Arabia which is devoid of any NGO establishment. Often times, even if the laws suggest otherwise, it is the society that continues to follow certain practices due to the firmly rooted beliefs (Merry, 2006; Human Rights Watch, 2008).

Women are now allowed to be provided with the utmost level of education; however, they are still not supported to work professionally in their respective fields by their families. Saudi Government now encourages women to participate in sports, or become lawyers, but the major part of the society continues to observe women merely as a carrier of tradition and family culture. Hence, despite the Saudi government making relevant amendments in the policy structures to support women rights, the citizens refuse to accept them in order to sustain their roots and keep them impermeable from the western ideologies. Thus, this causes certain amount of disrespect to the objective and purpose of the convention, making them void. Moreover, the society, its environmental components, and the political scenario and motives determine the interpretations and extent of the Islamic Laws. In the case of Saudi Arabia, it is the rigidity of these laws that govern the injustice of women, and hence, it is not the laws but the interpretations that benefit or violate the women's rights

Tunisia:

Tunisia is considered to be an exemplary model when it comes to CEDAW and Women rights subject. Despite using Islamic law as a legal framework, Tunisia still manages to include and safeguard women's rights in its legislation. Reservations on CEDAW convention have been posed by Tunisia too, but their justification mainly cite their national legal structure rather than the *Sharia* law (Brandt and Kaplan, 1995).

In 1956, Tunisian government brought a revolution by establishing 'The Personal Status Code' in its legal structure, which was responsible for bringing significant reforms in the family law, including components such as divorce and abolishment of polygamy. Moreover, these reforms were not termed as illegitimate by Islam, as they were rescued by the tool of "innovative reinterpretation of religious laws". For abolishing polygamy, Tunisia cited these reasons: 1) Polygamy, like slavery, was an institution whose past purpose is no longer acceptable to most people; and (2) the ideal of the Quran was monogamy. Here [a reformist position] was espoused, namely that the Quranic permission to take up to four wives (IV: 3) was seriously qualified by verse 129: "Ye are never able to be fair and just between women even if that were your ardent desire" (IV: 129) (Venkatraman, 1995). Thus, Tunisia chose to rely on the belief that Quran promoted Monogamy over Polygamy.

Tunisia made reservations on articles 9, 15(4th paragraph), 16 and 29, giving the reason of national legislation instead of Islamic law as mentioned above. Thus, the lack of citation of Islamic law as a justification reflects a progressive method of interpretation of *Sharia*. Hence, it proves that the interpretation of the *Sharia* Law is a hindrance to the execution of CEDAW, and not *Sharia* itself.

Turkey:

While Saudi Arabia and Tunisia's approaches towards CEDAW were motivated by their discrete perceptions towards the *Sharia* law, Turkey's stand on this subject may have been driven by completely different reasons. Turkey is a nation residing between Asia and Europe, with approximately 99% of its population being Muslim. However, only 12% supports the implementation of *Sharia* law as a national law; hence, making it one of the most liberal Islamic nations. (Hurriyet Daily News, 2013)

Through the remains of the Ottoman Empire, Modern Turkish Republic was born in 1923, along with significant reforms as its by-products. These reforms included the issue of women rights in its scheme. Soon, a political party for women's rights called Kadınlar Halk Firkasi was formed, which managed to achieve voting rights for women as well as the rights to stand for elections. Furthermore, a National Women Commission was launched and many reforms were brought in the legal system pertaining to this issue, such as eradication of domestic violence, honour killings, gender discrimination at work place and the choice to retain their surnames after marriage (Müftüler-Baç, 2012). The state constitution involves 'equality before law', describing it as "Men and Women have equal rights and the state is responsible for the measures to implement those rights".

In the subject matter of CEDAW, Turkey imposed few reservations but withdrew them later, and soon an amendment for Article 90 of its constitution was launched, which guaranteed that CEDAW's stance would be superior in any case of dispute. However, one cannot help but notice that Turkey's policies regarding the gender issue are driven partially by the ambition to join the European Union, as Turkey's enthusiasm for reformations coincided with the announcement of Turkey as a potential candidate for EU accession. Thus, the lifting of reservations by Turkey can be said to be motivated by the political developments and enhancing pressure from women rights groups simultaneously.

CONCLUSION

A particular religious set of laws is not a very rational justification to defend a form of human rights violation on a global platform. The major challenge faced by the CEDAW today is that it cannot impose the laws on any nation due to the prominence of 'sovereignty'. Hence, the rights of the women are continued to be exploited in the name of particular religious beliefs. However, following the above information, one can undeniably acknowledge the fact that the real challenge is not the *Sharia* law itself, but it is the varied interpretation of the *Sharia* consolidated with the intricate texts, political motives and conservative traditions.

Nonetheless, if one observes the case of Tunisia, which opened all its conservative doors to welcome liberal policies towards gender equality without any opposition from the Islamic community, one can extrapolate that it is not impossible to bring modifications in these laws. Moreover, these laws are extremely outdated, but there is still a hope to bring a change by using the same tool of 'interpretation' positively and constructively. While there are nations like Saudi Arabia that follow the Islamic Law strictly and have no place for interpretation due to Hanbali rulebook, there are also nations like Turkey that refuse to be bound by Islamic laws as a national legal system.

One must not overlook the fact that the Quran is not about discrimination, but rather, it is about justice, and historically, women have had a strong hold in the Muslim community. The Prophet's wife Aisha was very much involved in politics, making her a significant part in narrating Hadith. (Yılmazörnek, 2013) Sura Bakara and Sura Nisa are few of the verses of Quran which talk positively about women and how they must be respected (Yahya, 2005). The custom of giving 'Meher' actually favours women, however discriminative it might be for the men. (Womens UN Report Network, 2011) Regarding co-operation with CEDAW, it is necessary for the nations to submit proper reports while imposing reservations that many nations avoid. Nations must understand the gravity of the issue of women rights and work for it, and complying with the CEDAW convention would be the most suitable way to do so. While some nations still remain hesitant to work for women rights, many nations have made reforms in their legal framework to favour their rights, and thus, they can work as torchbearers for the prior cases (Blanchfield, 2011).

REFERENCES

- Abdul-Haqq, I. (2006) Islamic Law: An overview of its origin and elements. In: Ramadan, H.M (ed.). *Understanding Islamic Law- From Classical to Contemporary*. Oxford: Altamira Press
- Blanchfield, L. (2011) *The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Issues in the U.S. Ratification Debate*, Congressional Research Service, United States. [Online]. Available from: <https://fas.org/sgp/crs/row/R40750.pdf>. [Accessed on 30 May 2017]
- Brandt, M. and Kaplan, J.A. (1995) The tensions between Women's Rights and Religious Rights: Reservations to CEDAW by Egypt, Bangladesh and Tunisia. *Journal of Law and Religion*, 12(1), 105-42.
- Farhoumand-Sims, C. (2009) CEDAW and Afghanistan. *Journal of International Women's Studies*, 11(1), 136-156.
- Freeman, M.A. (2009) *Reservations to CEDAW: An Analysis for UNICEF*. New York: UNICEF.
- Hallaq, W.B. (1999) *A history of Islamic Legal theories: An Introduction to Sunni Usul Al-fiqh*. Reprint, Revised ed., Cambridge: Cambridge University Press.
- Human Rights Watch (2008) *Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia*. Human Rights Watch.
- Hurriyet Daily News (2013) *Most Muslims want Sharia, split on interpretation: Study*. Washington: Hurriyet Daily News.
- Jean, F.S. and Mimi, K. (2010) *Industrialization in the Gulf: A Socioeconomic Revolution*. London: Routledge.
- Mayer, A.E. (1998) Islamic Reservations to Human Rights Convention: A Critical Assessment. *Recht van de Islam*, 15(1), 25-45.
- Merry, S.E. (2006) *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago Series in Law and Society. Chicago: University of Chicago Press
- Müftüler-Baç, M. (2012) *Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs: Gender Equality in Turkey*. Brussels: European Parliament.
- Rumminger, J., Moussa, J. and Anwa, Z. (2012) *CEDAW and Muslim Family Laws: In Search of Common Ground*. Malaysia: Musawah.
- Schöpp-Schilling, H.B. (1999) Effektivität von Abkommen zum Schutz der Menschenrechte am Beispiel der CEDAW, 74 (1/2), 204-228.
- UN Women (2009) United Nations Convention on the Elimination of all forms of Discrimination on Women. [Online]. Available from: www.un.org/womenwatch/daw/cedaw edn, UN Women. [Accessed on 12 May 2017]
- United Nations (1969) *Vienna Convention on the Law of Treaties*. Vienna: United Nations.
- Venkatraman, B.A. (1995) Islamic States and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women: Are the Shari'a and the Convention Compatible. *American University Law Review*, 44 (5), 1949-2027.
- Warren, C.S. (2008) Lifting the Veil: Women and Islamic Law. *Cardozo Journal of Law and Gender*, 33(15), 43-44.
- Womens UN Report Network (2011) *Islamic Jurisprudence- Human Rights Norms*. Morocco: CEDAW, Women's UN Report Network.
- Yahya, H. (2005) *Maryam: An Exemplary Muslim Woman, The Importance of Women* [Homepage of Harun Yahya International]. [Online]. Available: <http://www.womaninthequran.com/04.html>. [Accessed on 21 May 2017]

Yılmazörnek, B. (2013) *The Wives of the Prophet*. [Online]. 14 June 2013-last update, Last Prophet.info. Available from: <http://www.lastprophet.info/the-wives-of-the-prophet> [Accessed on 12 May 2017].

14-CA27-1057

CURRENCY VALUE STABILITY IN ISLAMIC MONETARY SYSTEM*PROF. DR. KAMAL HATTAB¹**ABSTRACT**

The fluctuations in the internal and external value of money is considered to be one of the most prominent problems of contemporary economies. It causes an economic chaos, affects people life, harms the trade movement between nations, in addition to the huge losses in the reserves of the affected countries.

Despite all the efforts made by many countries, especially the big ones, to maintain stability, in the exchange ratios in capitalist and socialist economies, the fluctuation continued to happen and the exchange ratios are deteriorating.

This study has concluded that the Islamic Monetary system contains self-restrictions and factors that lead to stability in price levels as a whole, as well as stability in exchange rates. Furthermore, the Islamic monetary system has its own policies and curing measures that help in stopping deterioration in exchange prices if it occurs.

Key Words: Currency Value, Islamic Monetary, Stability.

INTRODUCTION

There is no doubt that fluctuations in the value of money lead to a diminution of people's rights, disrupt the value of their property, and create chaos and injustice, in addition to the obstruction of trade, and the lack of trust, cooperation, and tolerance among people.

The phenomenon of the fluctuations of the money value is not new, the ancient coins were not immune to changes in the value of money. But fluctuations that happened with the use of paper money were unprecedented.

It is known that the value of the currency is directly linked to the general level of prices if the value of the currency fell down the general level of prices will increase, and vice versa. This means that the factors affecting the value of the currency adversely affect the level of prices, and the factors affecting the general level of prices adversely affect the value of the currency.

One of the fundamentals of the Islamic law is that property is inviolable and respected, people control their own money, and no one can take it from them unjustly (Muzani 0.8 / 92). The prophet, peace be upon him said: "Your blood, property, and honor are sacred to one another (i.e. Muslims) like the sanctity of this day of yours, in this month of yours and in this city of yours" (Bukhari, 1979).

Is it possible to stop these fluctuations or reduce them? Are there any controls or mechanisms in the Islamic monetary system which can stop these fluctuations to ensure the stability of the currency in circulation?

This hypothesis of this study is that the Islamic monetary system includes these controls that can stabilize the price level in general, and exchange ratios, in particular. Also that the state can control the fluctuations in currency exchange through its monetary authorities.

¹ Islamic Economic Professor in the department of Comparative Fiqh, Faculty of Sharia and Islamic Studies, Kuwait University, Kuwait. Ex-deputy rector for academic affairs division, Al-madinah International University, Malaysia. Ex-Chairman of Islamic Economic department in Yarmouk University, Jordan. E-mail: K_hattab99@hotmail.com

* The Author extend his appreciation to Research Sector at Kuwait University for funding the work through the research project No HC02/16

DETERMINANTS OF THE VALUE OF MONEY

The definition of money:

Economists defined money as "Anything commonly used as an intermediary for the exchange and standard of values and has a general acceptance of all the individuals" (Burey, 1976, p. 39).

The scholars of Islamic Fiqh has no exact definition for the money. However, there were many Fiqh texts that talked about descriptions and functions of money. For example; Imam Ibn al-Qayyim said: "Dirhams and Dinars are prices of sales, the price is the standard which is defined by the evaluation of money, and it must be stable, does not rise or fall". (Ibn al-Qayyim, 1968, p. 156)

Also, Imam Al-Ghazali said, "God created Dirhams and Dinars to change hands (to circulate) and to establish rules in exchanging of goods with justice" (Ghazali, 1968, p. 114),

The most important characteristic of money in these texts is as a gauge of value, this gauge should be precise and discipline does not change or fluctuate.

The value of the currency:

Many people believe that the currency value is linked to the cover in gold kept by the central bank in every country. This idea might be correct before the First World War. But it is far from being correct at present. Because the value of the currency is determined according to several interrelated factors, related to the economy of the country and its relations with the economies of other countries. The cover in gold which is usually held by the central bank is only used for calculation purposes of the Central Bank budget process. (Shafie, 1982, p. 340; Radhi, 1982, p. 137)

The internal value of the currency is what the money represents in goods and services. Or what can be bought with money from the goods and services within the country "purchasing power of money". The internal value of the currency is based on the price level. The price level is affected by many factors, as in the following section.

Factors affecting the price level (internal money value):

Monetary theories looked at the factors affecting the level of prices since the sixteenth century. But after the discovery of gold mines in the New World, this gold is brought to Europe, which caused a dramatic increase in prices. This made many researchers look for the factors affecting the prices. Which were the first steps toward the quantity of money theory which states that money supply has a direct, proportional relationship with the price level. For example, if the currency in circulation increased, there would be a proportional increase in the price of goods, this theory had subjected to research and study in different economic schools, and subjected to the development and modification in multiple stages, and can be summarized in the following (Shafie, 1982, p. 402; Kafrawi, 1987, p. 121-130).

Exchange equation (Fisher):

Which appeared for the first time in the book of Fisher "purchasing power of money" in 1912, this equation determined all the factors involved in influencing the general level of prices, the equation is simple:

$$N \times Q = k \times m$$

Where (N) is the quantity of money, (Q) money rotation speed, (K) the volume of trade, (M) the general price level. The theory assumed a fixed speed in money rotation in the short term, as well as a constant level of exchanges at the stage of full employment, which happens continuously and automatically - as in the classical theory hypotheses.

What we learn from this equation is that the price level (M) entirely depends on the quantity of money (N), every increase in the quantity of money lead to an equal increase in the price level, which means that as long as the number of goods and services is fixed, each increase in the amount of money lead to an increase in the price level especially if the money only is used for spending, and not for other purposes (Zaki, 1980, p. 78; Maatouk, 1988, p. 23-25).

Cash balance equation (Keynes):

Keynes attacked the hypotheses of classical theory where money is only for transactions and said that individuals prefer to keep money idle (liquidity preference). They keep their money in the form of savings or investments. What affect their decision to favor one of two choices is the price Interest, Keynes expressed it by the following equation: $d = (-q, +k)$.

Where (d) is the demand for money, (m) the level of prices, (q) interest rate, (k) income size. This equation shows that the amount of money and the price level related inversely with interest rate and directly proportional to income (Kafrawi, 1987, p.124 - 125).

The modern theory of the amount of money (Friedman):

Friedman explained that the price level depends on the factors affecting the demand for money, as illustrated by the following equation:

$$d = D (Im, rd - rm, rs - rm, ri - rm)$$

Where (d) is the demand for money, (m) price level, (rd) return on documents, (rs) the stocks return, (ri) the return of inflation, (rm) return of the money, (Im) permanent income.

According to this equation, we see that the price level, is influenced by factors that affect the demand for money which are the incomes or wealth in addition to the cost of the opportunity of the acquisition of money and which represent the returns on bonds and equities compared to the return of money and the return of inflation.

All the above factors that affect the price level also affect the value of money. The value of money is an inverted price level $1 / m$. So, an increase in the price level means a low value of money and vice versa. (Maatouk, 1988, p. 182-186)

FACTORS AFFECTING CURRENCY EXCHANGE RATES (FOREIGN EXCHANGE VALUE)

This value reflects the exchange rate on the price of a currency to another currency exchange. Each currency price exchange, has an official price, which was called in the past; the price of the equalizer when the gold was the standard for measurement, then became a so-called central rate when the standard is becoming the special drawing rights, this official exchange rate has many types according to the central banks purposes.

The other exchange price of the currency is called the real exchange rate, which is determined based on the currency supply and demand and is sometimes called the black market price.

Currency exchange rates fluctuate in practice and according to many factors, the most important factors as follows (Eissa, 1984, p. 11):

Currency Speculation:

Most of the people have the intention to speculate on currencies, they will sell the currencies in which they expect a low value against the currencies in which they expect a high value, a large amount of currency selling in global markets leads to the reduction of its value, and the opposite happens when increasing the demand for a certain currency with a large amount.

The balance of Payments:

It is a record of the rights of the state and its debt to the outside world, (Shafie, 1977, p. 57) and therefore the figures published monthly or quarterly about this balance of payments are very

important source for dealers in foreign exchange markets to predict and the amount of the currency and its exchange rate. Relations and processes expressed by the balance of payments are payments from the state to the outside world or vice versa. Therefore, these payments have a significant impact on the foreign exchange markets. (Eissa, 1984, p. 82)

Fiscal and Monetary Policies (Afar, 1985, 319- 343):

Fiscal policy means the actions that government takes for the treatment of inflation and deflation and economic stability. Which means that the government actions regarding taxation and spending, taxes as the most important tool of fiscal policy tools have a positive effect on the exchange rate when imposed with a view to fighting inflation, and have a negative impact on the currency exchange rate when imposed on funds by non-residents, which reduce the foreign capital flow, thereby reducing demand for the local currency and therefore the exchange rate goes down. As for monetary policy, which deals with central banking actions with regards to the money supply and interest rates. It's the procedures carried out by the state represented by the central bank to manage money, credit, public liquidity in the economy. Or the procedures that allow an increase in money supply which leads to a reduction of the currency exchange rate. And, also the procedures that reduce the money supply leading to an improved exchange rate.

The interest rate policy is the most important instrument of monetary policy, as an increase in the interest rate on deposits reduces the money supply and thus improves the exchange rate and vice versa. Decreasing the interest rate on deposits will make investors look for alternative opportunities, which increases the money supply and therefore the currency exchange rate declines. There are continuous operations that keep the balance between interest rates in different exchange markets, where people borrow currencies which have declining interest rates and sell them in the exchange. And purchase other currencies which can be invested at the price of high interest, these operations leads to a large movement of the capital, and significant impact on exchange rates. (Eissa, 1984, p. 83)

Imported Inflation:

It's the impact of external factors on the general level of prices in the country, and can be measured by the following equation:

Imported inflation = losses due to high imports / Total current prices × 100 national expenditure rates

The increase in imports and decrease in exports leads to a trade balance deficit, if the state reserves of gold and foreign currency cannot finance the deficit, and the state debt has reached a limit, and it did not resort to imposing restrictions on imports, the inevitable result is a reduction in the external value of the currency. (Zaki, 1986, p. 115)

Interventions:

Central banks intervene in currency markets to achieve specific economic objectives by influencing the currency exchange rate. This often influences the expectations of workers in the markets, and who may be harmed or benefited as a result of this intervention (Eissa, 1984, p. 86; Williamson, 1981, p. 2).

Rumors:

Rumors have a significant impact on exchange rates, particularly with regard to economic policy, political changes or wars where the result would be a movement of capital to and from outside the country. Which leads to fluctuations in exchange rates proportional to the size and the validity of the rumor (Eissa, 1984, p. 85).

The Commandments of the International Monetary Fund:

When the International Monetary Fund experts find that any state is spending more than its capacity, they put policies in order to rationalize the expenditure. If the state failed, they recommend reducing the value of its currency and it's often associated with political goals. Which often cause a loss in the rights and properties of individuals. And a reduction in the welfare rate or in other words, reduction in the per capita resources of his country, through the so-called re-allocation of resources. (Zaki, 1987, p. 170)

THE STABILITY OF THE CURRENCY VALUE IN THE MODERN ECONOMIC THOUGHTS

Despite the controversy between supporters of the theory of the amount of money and supporters of Keynes's theory of economic about exchange rate stability; the mechanism that preserves the stability of the currency currently applied is the mechanism adopted by and managed by the International Monetary Fund who controls the world's currencies.

This mechanism has begun in the Bretton Woods (NH, USA) in 1944 when representatives of victorious countries in World War II met to decide the monetary future of the post-war world. The result of this conference is the establishment of the International Monetary Fund to be one of the most prominent tasks to achieve the global monetary stability and to ensure the conduct and settlement of global payments on a regular basis through the reduction of imbalances in the balance of payments of the member states. This Fund has continued to carry out this function over thirty years, by linking the currencies of all countries of the world gold in the beginning and then to the dollar or to other world currencies. And finally leaving each country free to link its currency, or float its exchange rate in accordance with supply and demand.

However, the International Monetary Fund still exercise the function of management and control of currency exchange rates in the world, while offering his advice - which often is obligatory- for most of the states with regard to currency exchange rates.

The recent trend adopted by the International Monetary Fund is the liberalization of trade, open markets, the lifting of restrictions and customs barriers, the removal of subsidies on basic commodities, enhancing exports through the reduction of currency exchange rates especially in third world countries, and privatization, as well as accepting everything imposed by the globalization like the full freedom in the flow of capital funds and investments in the world markets in search of lucrative opportunities.

These policies -although it has some pluses in developed countries- have very serious on the countries of the third world effects, is the high level of prices, and lower standard of living, and increased indebtedness and the aggravation, etc. (Bashir, 1995, p. 24; Martin Schumann, 1998, p. 100).

Hence, many economists are calling a number of actions in order to achieve monetary stability at the country level (Shafie, 1982, p. 337-342; Algharib, 1979, p. 62-65; Pollack, 1997, p. 17-18):

The need to focus on the internal stability of prices, whatever the circumstances, and then try to maintain the external value of the currency if the foreign trade accounted for a large proportion of the national income, and that to achieve the proper balance of payments.

The need for full independence of the central bank's, so that the Governor of the Central Bank has a guaranteed full authority by law, to prevent any party from interfering in its affairs, especially the government.

The need to maintain the optimal rate of monetary expansion to match the volume of production.

The central bank should always keep a variety of assets as a monetary reserve which should not worth less than the cash value of the securities issued at any time, also it should not allow the issuance of money, except for economic reasons.

The treasury bonds should not be issued by a percentage that exceeds the foreign assets where that would lead to an increase in public debt.

VALUE OF THE CURRENCY IN THE ISLAMIC MONETARY SYSTEM

Islam emphasized the preservation of all the rights and properties in many of its religious texts, such as in the Quran "And do not deprive people of their due and cause not corruption upon the earth" (Al-Araf, 85) and "Woe to those who give less [than due], Who when they take a measure from people, take in full. But if they give by measure or by weight to them, they cause loss" (Mutaffifin, 1-3). As well as the sayings of the Prophet -peace be upon him- which urges the preservation of rights, such as: "All the Muslim belongings are forbidden for another Muslim; his blood, money and honor" (Bukhari, 1979, p. 574).

Indeed, many of the prohibitions in sharia, in the field of transactions are due to the goal of the preservation of rights and the removing injustice, including the prohibition of usury and monopoly, fraud and other contracts involving uncertainty. Thus protecting the value of money from fluctuations in sharia is due to the same goal of preserving the rights and remove injustices, because it represents the people's rights and the value of their property.

The Islamic monetary system ensures the stability of the money value of through a number of controls as follows:

Determination of the legitimate weights of money:

The money in circulation at the time of the Prophet - peace be upon him – had a troubled weights and shapes, leading to a large number of differences and disputes, and disrupt business activity, so the Prophet - peace be upon him – selected one weight for the money, and allowed people to deal only with this weight, where he ordered to use the scale of Almadena, and the weight of Mecca (Alnasae, 1930, p. 54).

The people of Mecca had their particular weight of money, so the prophet - peace be upon him - approved that weight, and called for the adoption for this weight alone and no other weights, so it settled in Islam on the legitimacy of money weights (6), this weight does not change with time or place.

Islam emphasized to adopt those weights over time, through his many legitimate weight scales. (Jawad Ali, 1980, p. 487; Alnsari, 1980).

Issuing money is a function of the president of the state or his deputy for this purpose:

The Muslim scholars emphasized that issuing money is the function of the Imam or his designee for this purpose, and they declared a punishment to anyone who tries to manipulate money through fraud, forgery, etc.

This indicates a very significant importance to the stability of the value of money. Which was determined in the past by weight, quality, and degree of purity and so Islam was careful to not allow manipulating these things.

Islamic monetary system's based on gold and silver:

The gold value of money is determined by the value and weight of gold. The gold has commodity value in the market, this value should be equal to the nominal value of the golden money, if the two values are not equal, people will quickly turn their possession of the golden money to the Jewelry or vice versa, depending on the higher value, and this property maintained the golden standard constant in the past centuries.

This property makes the Islamic monetary system based on gold and silver, a lot of evidence can prove this fact, such as:

The Islamic monetary system was depending on gold and silver for 14 centuries, the ancient Islamic coins are still preserved in many of the world's museums (Fahmi, 1964, p. 24).

In addition, the Prophet - peace be upon him - has approved transactions with gold dinars and silver dirhams and set it to a fixed legitimacy weights.

The scholars called the gold and silver congenital coins, which means that they are created to be money.

The Islamic monetary system limits the usage of gold and silver as non-money.

The Islamic monetary system prohibited the hoarding of gold and silver and locking it from transactions.

Prohibition of usury:

Islam emphasized on the prohibition of usury, and God declared a war against usury eaters, given its serious effects on the society in all areas. Like its impact on the instability of the value of money. When producers add interest rates on loans to the cost of production, this leads to increased prices and therefore a decrease in the purchasing power of the currency, and a decrease in the internal value of the currency. While on the international level, adding the interest rate on loans leads to increased prices of imported goods and thus decreasing the external value of the currency (exchange rate).

The giving of Zakat:

The money position in the Islamic community is determined by money circulation among individuals to serve the production operations. So, the order to give Zakat induces money investment and rotation as well as wealth distribution, that leads to monetary expansion, which in this case does not have inflationary implications because Zakat has 8 special expenditures, its only spent for those in need and those who do not have any previous surpluses.

In addition, the specific value of Zakat (almost 2.5%) helps monetary authorities to regulate the money supply. (El-Assal, 1980, p. 113; Mashoor, 1992, p. 102)

The prohibition of monopoly:

Monopoly is to deprive people of some essential commodities by some traders until an increase in the prices, monopoly leads to higher prices, and this means a lower purchasing power of the currency or currency devaluation, so by the prohibition of monopoly; prices do not increase significantly, which leads to stability and balance.

Prevention of fraud and counterfeiting:

The fraud leads to a lack of confidence in money and a fall in its value; therefore, scholars stated a punishment on anyone who tries to manipulate money by fraud, forgery or any other illegal way.

The prohibition on non-possession commodity sale:

One of the conditions of the contract of sale is to be able to hand over the item. And if the items are not handed over yet, then there's a doubt. So, the sale of goods before taking possession could lead to conflict and antagonism, and that the use of sale contracts in the sale and purchase of other goods will result in a competitor for the use of money in the society, and thus affects the value of money.

MONETARY POLICY IN THE ISLAMIC ECONOMY

After the full application of Islamic monetary system, it is expected that monetary stability is achieved; however, if the fluctuations appeared in the value of money, it is possible to use the Islamic monetary tools.

Islamic monetary policy is based on a number of essential principles such as:

Issuing money is a function of the president of the state or his deputy. (Alnawawi, 1990, p. 110; Abu Yali, 1983, p. 181; Alramly, 2005, p. 86)

The state has the legitimacy right to do what would benefit the people, even if it restricts the permissible property.

Therefore, the Central Bank - as a representative of the state – can restrict the ownership of the property in order to achieve stability in the monetary system and prevents the occurrence of fluctuations and economic crises. (Abadi, 1974, p. 255; Majzoub, 1983, p. 262-265).

The State does not issue money except for economical purposes.

The monetary policy is based on the principle of participation (Murabaha, Mudaraba, lease renting, ... etc.) and not on the principle of lending. (Chapra, 1984, p. 9)

Based on the previous point, there are fewer chances for money creation in the Islamic monetary system.

In the following steps, some of the Islamic monetary policy tools (Chapra, 1984, p.11; Afar, 1985, p. 368; Arif, p. 25-29; Majzoub, 1983, p. 272):

- Raising and reducing the share of the contribution of the Commercial Bank in the investments.
- Raising and reducing the share of the bank in investments profits.
- Increasing the limitations and conditions on the partners of the bank in the investment operation according to economic and social purposes.
- Restricting or facilitating the forward sales operations.
- Increasing and decreasing the proportions divided profits.
- The legal reserve ratio policy: By increasing or decreasing the reserves of commercial banks at the central bank. Increasing the reserve ratio reduces the ability of banks to carry out investment operations, and the opposite happens when the reserve ratio goes down.

CONCLUSION

There are many factors that influence the level of prices; these factors were examined in the different monetary theories. the amount of money, the speed of rotation, the volume of trade, the ratio of cash preference, the interest rate, in addition to all the factors affecting the demand for money. However, these factors were not examined in the Islamic Monetary theory.

There are many factors that affect the currency exchange rates (external value), including the balance of payments, monetary and fiscal policy, currency speculation, imported inflation, interventions, rumors ... etc. Thus, these factors need to be regulated by the Islamic Monetary theory.

The Monetary institutions in the state should control the previous factors to avoid fluctuations and crises and to maintain the stability of the value of money, which is achieved in particular when it controls the monetary expansion to be equivalent to GDP growth.

The monetary Islamic system has controls and regulations to achieve the money value stability.

The Islamic system is keen on preserves the rights and the payments of the debts while maintaining justice among the people, and therefore it's keen to preserve the stability of the value of money.

All the instruments and tools that make up the Islamic system are working on the preservation of price stability which leads to economic stability. So the prohibition of usury, monopoly, compactness, fraud, forgery and the Prevention of sale unless handed over and the

voluntary spending... etc., are all tools to contribute to the economic stability and the elimination of fluctuations in the value of money.

If fluctuations are not over by the previous tools, the Islamic monetary policy tools are capable of ending fluctuations and to preserve economic stability and durability.

REFERENCES

- Abadi, A. (1974) *Property in Islamic law*. Amman: Al-Aqsa Library.
- Yali, A. (1983) *Alahkam Alsultaneia*. Beirut: National Library of science.
- Afar, M. (1980) *Fiscal and monetary policies in Islam*. Cairo: The International Association of Islamic Banks.
- Algharib, M. (1979) *Money and banking economics*. Cairo: Dar Al Hana.
- Al-Ghazali. (1986) *Ihyau Uloom Aldin*. Cairo: Halabi Foundation.
- Ali, J. (1988) *Detailed in the history of the Arabs before Islam*. Beirut: Dar Alelm.
- Al-Jawziyyah and Ibn Al-Qayyim, I. (1986) *Ilam al-Muwaqqiin*. Cairo: Al-Azhar colleges Library.
- Almajzoub, A. (1983) *Monetary policy in Islamic Economics*, Master Thesis. Makkah: Umm Al Qura University.
- Alnawawi, Y. (1990) *Almajmou*. Beirut: Dar al-fikr.
- Aramly, S. (2005) *Nehayat Almuhtaj*. Beirut: Dar Ehya Alturath.
- Arif, M. (1982) *Monetary policy in an Islamic economy*. Jeddah: The International Center for Research on Islamic economics.
- Chapra, O. (1984) *Monetary and banking system in the Islamic economy*. Jeddah: The International Center for Research on Islamic economics.
- Eissa, S. (1984) *Markets and foreign exchange rates*. Cairo: Intraco for printing.
- El-Assal, A. (1980) *The economic system in Islam*. Cairo: Wahba library.
- Fahmi, A. (1964) *The Arabic Money*. Cairo: Dar Alqalam.
- Ibn, R. A. (1980) *Clarification of weights and measures*. Makkah: auditing by Mohammad Kharouf, Umm Al Qura University.
- Kafrawi, O. (1987) *Money and banking in Islamic system*. Alexandria: Dar Aljameat Almasryah
- Mashoor, N. (1992) *Islamic economy and inflation*. Cairo: the scientific journal of the Faculty of Commerce, Al-Azhar`Girls University.
- Muslim, M. (1955) *Sahih Muslim*. Cairo: Dar Al Arab.
- Shafie, M. Z. (1982) *Introduction to Money and Banking*. Cairo: Alnahda alarabia Publishing House.
- Zaki, R. (1980) *The problem of inflation in Egypt*. Cairo: The Egyptian General Book Authority.
- Zaki, R. (1986) *Imported inflation*. Cairo: Dar Almustaqbal Alaraby.
- Zaki, R. (1987) *Thought Crisis*. Cairo: Madbouly Library.

16-CA28-1070

HIGH SPEED RAILWAY JAKARTA-BANDUNG AS ECONOMIC BELT INITIATIVE: ANALYSIS OF CHINA'S FOREIGN POLICY IN INDONESIA

FADLAN MUZAKKI¹

ABSTRACT

Sino-Indonesian relations have always been ups and downs. However, the relation is now getting much better. It can be seen that China succeeded in winning a bid for a high-speed railway line linking Jakarta to Bandung. There are several key factors as to why China successful, such as budget consideration, length of the construction, the total number of workers, the marketing strategy, and the business model offered. This paper analyses the factors using SWOT analysis. Besides, this paper is unearthing the potency of choosing China in handling the project of the high-speed railway. This research brings a new and broad perspective on the borderless community between two countries. Moreover, also gives a new perspective for students, researchers, observers who want to conduct a research on China-Indonesia relations in today's world. Suggestions are also mentioned to raise a much closer bilateral relation between Indonesia and China.

Key Words: China, Indonesia, Foreign Policy, OBOR, High-Speed Railway

BACKGROUND

China-Indonesia relation has been fluctuated for several decades. Nevertheless, a positive signal of bilateral relation had been occurring in 1990 after been frozen for just under a quarter of century. In 1990, Chinese Foreign Minister Qian Qichen met President Soeharto to normalize diplomatic ties that had been frozen for 22 years (Suryadinata, 1990). Meanwhile, in early 1997, President Soeharto warned that should these communist groups spread their activities, the country's economic development would be jeopardized (Storey, 2000). While Indonesia approves of the 'One China Policy', China reciprocated the gesture at the United Nations on the East Timor issue.²

China is now becoming Indonesia's second largest trading partner, with bilateral trade standing at US\$ 66.2 billion, this is four time of 2005. Both countries continue to make relations closer by agreeing on investments. China continues to encourage Chinese direct investment in Indonesia. Trade and Economic Corporations have been established to empower both domestic economies and also impact on international economy, especially in the region (China Daily, 2013). Furthermore, the relation is becoming much closer. It can be seen that China's Minsheng Investment Corp, Ltd (CMI) has invested in Indonesia. This investment shows CMI's commitment to support China and Indonesia existing international relations (China Daily, 2015).

Turning to the current relations between Indonesia and China, both countries seem to establish bilateral relations to collaborate more on economic development. It was clear that China won the bid of high speed railway Jakarta-Bandung. Therefore, the question is how China won the bid to construct a high railway project linking Jakarta to Bandung? The next

¹ Master Student, School of Public Affairs, Department of International Relations, Zhejiang University China. Fadlan is an awardee of ASEAN-China Extraordinary Exchange Scholarship under Chinese Government Scholarship. E-mail:- fadlanmuzakki@zju.ac.id

² Megawati Sukarnoputri, the then Indonesian President after Abdulrahman Wahid (Gusdur), and her government refused Taiwan President's request to visit Indonesia in 2002, on the ground that Indonesia believed in 'One China Policy'. The Susilo Bambang Yudhoyono government also concurs with the views of the previous government.

question to arise is whether Chinese foreign policy in this sector can be seen as success or failure. Hence, this essay will analyse One Belt One Road, especially economic belt initiative to answer these questions.

THEORETICAL APPROACH

China's High Speed Railway Diplomacy can be examined by several theoretical approaches, especially when it comes to fast speed railway project Jakarta -Bandung in Indonesia. It can be allayed by International finance, International organization and international system, peace and government.

From the international finance perspective, China has played a fundamental role in the establishment of a funding mechanism, both multilateral, bilateral, or commercial institutions. There are also several financial institutions such as the Asian Development Bank, the European Bank and many others.³

According to International organization and international system, China has played a major role in setting up the Shanghai Cooperation Organization, the Ba'ao Forum and several others. This organization has is seen as a calm institution compared with traditional international organizations (Xinhuanet, 2015), but, the point is Chinese people play an important role in these organization thus meaning power can be maintained in the organization. Furthermore, in order to strengthen its foreign policy, especially in Indonesia, China has shown that the country has enough power to control and handle international organization. Thus, it creates trust between governments of two countries.

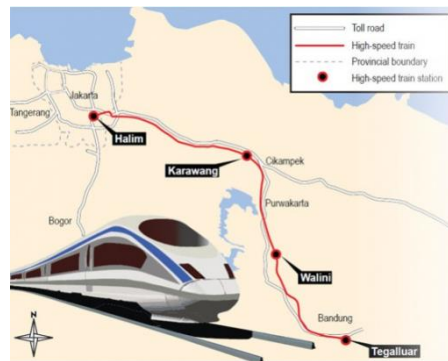
As per peace and governance, China's participation in organization and financial institution has made the country be regarded as an inclusive country in economic development. China's approach to global governance is completely comprehensive and showing a mutual benefit to countries which seems to cooperate with China. This soft power diplomacy is to avoid military intervention (Chan, 2016). Hence, China's approach can achieve what can be called as a "structural peace".

When a Chinese-led consortium sought a contract to build a high-speed railway between Jakarta and Bandung, Indonesia leveraged the consortium's eagerness to beat a Japanese-led rival to win a major concession: the consortium would drop its requirement for the Indonesian government to backstop China's loans. In the end the consortium won the contract. But Indonesia offloaded the project's financial risk onto China (Chang, 2017). China welcomed Indonesia's choice, which meshes well both with Beijing's call for Chinese companies to "go global" and to increased infrastructure investments from China along the planned "Belt and Road routes."

HIGH SPEED RAILWAY JAKARTA-BANDUNG

High Speed Railway Jakarta Bandung is a quite complicated project which actually shows the competition between Chinese and Japanese Company. In early September 2015, Indonesia called off the plan to build a high-speed railway connecting Jakarta – Bandung. The purposes for constructing this rail line are to reducing transporting time and improve economic development between two cities. Indonesian government even has a long-term goal to achieve by 2030 to extent the railway network up to 12,100 km in major islands, including 3,800 km of urban rail network (Salim and Negara, 2016).

³ Such as the China Development Bank, the Export-Import Bank of China, and the Industrial and Commercial Bank of China.

Figure 1: Roadmap of high-speed railway project Jakarta Bandung

Source: *Indonesian Investment Website, 2017*

It can be seen that the high-railway project Jakarta Bandung will have four stops that contain Halim, Karawang, Walini, and Tegalluar stations among the route. This fast train project from Jakarta to Bandung is a project connecting the capital city of Jakarta to the textile hub of Bandung. There was a long story behind the project before it was decided that China was to handle the project. China has been selected by Indonesian government over Japan to build countries' first fast train rail link. The commencement year was 2016, the construction on the \$5.5 billion project will last for three years, with the completion schedule for 2019. The project will be developed by PT. Kereta Cepat Indonesia China (KCIC), a joint venture formed in October 2015 between consortium of Indonesian state-owned companies, and China Railway International. Moreover, the project will be carried out on business to business basis with Indonesia having interest in the joint venture, while China has 40% (Railway Technology, 2017).

The high-speed line between Jakarta and Bandung is regarded as an odd choice as existing infrastructure between both cities is relatively well-developed. Three-quarters of the investment required for the construction of the Jakarta-Bandung line will originate from the China Development Bank. The remaining 25% will come from the Indonesian state-owned companies. Wijaya Karya said it may issues a global bond (Indonesia Investment, 2017).

Chinese State Councillor Wang Yong, who attended the ground-breaking ceremony for the project, read a congratulatory message from Chinese President Xi Jinping to Indonesian President Joko Widodo at the ceremony. Xi said in the message that the successful launch of the project not only set a new record in pragmatic cooperation between China and Indonesia; it will also become a new model for bilateral cooperation in various fields, particularly in infrastructure and production capacity (Huwaxia, 2016).

How Does China Win the Project?

The high-speed railway project Jakarta Bandung was actually introduced in 2015. At the time, Japan has already proposed for the project for several years ago. Then, China joins to participate in the project bidding process when Indonesian government officially announce opening the project. The result was that China won the bid. Several factors can be analysed to unearth the reasons why China won the project instead of Japan which has already invested some resources (money) to conduct viability and feasibility studies on the project. Firstly, it can be seen from economic and trade corporation between Indonesia and China. The corporation has a board prospect.

Table 1: Trade between Indonesia – China in thousand US\$

	2015	2016	%
Total trade	36.478.290,1	37.399.875,8	2,53
Export	12.446.116,3	12.827.738,8	3,07
Import	24.032.173,7	24.572.137,1	2,25

Source: BPS, Processed by Trade Data and Information Centre, Ministry of Trade of the Republic of Indonesia.

It can be seen from the table above that trade between China and Indonesia experienced a gradual increase from around US\$ 36.4 billion in 2015 to approximately US\$ 37.4 billion in 2016, an increase of 2.53% in total trade. This condition has impacted on the relations between Indonesia and China in other sectors, not only in trade but also in industry. Thus, this can be counted as one of the factors that China can handle the high-speed railway from Jakarta Bandung. Other than that, the main relation has also strengthened to other sectors such as education, oil, infrastructure, security, counter terrorism, and other economic sectors. This closed relation leads to building mutual trust, especially in railway project.

Secondly, China's high-speed rail is considered to enjoy unpatrolled competitive edge. As it is known, China's high-speed rail has developed fast. It has developed with the longest operating mileage and the most comprehensive technology that the country has. This comprehensive and advance technology are increasing the quality and reducing cost. Moreover, about 30 countries had discussed cooperating with China in the area of transportation sector such as Malaysia, South Africa, Argentina, Thailand, Cambodia and so forth (Kun, 2016).

The high-speed railway service in China was firstly introduced in 2007. Then, it became massively popular with an annual ridership of over US\$1.44 billion in 2016. That is why the Chinese high-speed railway system is trusted in numerous countries throughout the world (Smith, 2017). In other words, China's high-speed railway system has progressively and massively increased over the last few years since its establishment. It was recorded that 9,676km of tracks are in operation and a lot more will be followed in years ahead. Meanwhile, the planning and construction is still on-going in various parts of China. The government plans envision of 16,000km high-speed railway lines with the cost of US\$293 billion to connect major cities by 2020 (Railway Technology, 2017). The graph below simplifies and shows the pace of China's high speed railway construction.

Figure 2: China's planned high-speed rail network in 2011

Source: Businessweek "The Year of the Metal Rabbit: China's High-Speed Rail Network" Feb. 2, 2011 China-Mike.com

It can be seen clearly that China's high-speed railway has quickly developed; it only took few years to connect several major cities in China. It can be clearly seen from the thick lines

on the graph that showed that the construction had already finished since 2011, only few years after the establishment. Therefore, the competitive edge in this way has given impact on Indonesian government decision when it comes to deciding China as a country to handle the high-speed railway Jakarta Bandung project.

Thirdly, China has prestigious “salesman” who always promotes their local company. Chinese president Xi Jinping introduced the idea of high-speed train to Indonesia since 2013 when he introduced the One Belt One Road Initiative. Moreover, Premier Li Keqiang also promoted China’s high-speed railway technology when he visited other countries, including Indonesia. The effort of the leaders to always promote its high-speed railway is to build trust in other countries. Furthermore, Xu Shaoshi, President Xi Jinping’s special envoy and head of the National Development and Reform Commission, met Indonesian President, Joko Widodo in Djakarta on August 20, 2015 and submitted a feasibility study for the Jakarta-Bandung high-speed rail project which was completely different from proposal submitted by Japan. During his visit, Xu also met other Indonesian cabinet ministers for further communications, and lobbying.

In addition, Indonesia has seen that the local economic development will be boasted by choosing China in the project as China will undertake a technology transfer as part of the project. Hence, Indonesia took both advantages of the world by choosing China. The project is expected to greatly benefit local economic development as the project in Indonesia is also being implemented in several countries in the South-East Asia (China Embassy, 2017). Furthermore, to be analysed more deeply, I use SWOT analysis to delve on how China won the bid.

Strength

China is ready to provide guarantee-free loans, while Japan requested Indonesian Government Funding. The high-profile railway contract was cancelled mid-way through due to high cost and funding issues. Initial plans were changed to a medium-speed rail link that would be 40% cheaper. Indonesian authorities everted the proposal to a high-speed rail link, and awarded the contract to China.

In 2015, after months of speculation, Indonesian government decided to choose China to build the high-speed railway from Jakarta to Bandung. This was as a respond to dissatisfaction with the slow progress in Japan’s infrastructure in the last several years (Asian Insight, 2017). Besides, in the proposal and planning provided by Japan was greatly difference from China proposals. This resulted in a long-time gap from planning and implementation of the Japan’s project (Masahiro, 2015). Therefore, to make it clear, the table shown below explain the comparison between China and Japan proposal and planning. Besides, this also analyses the strength that China has in the project.

Table 2: the comparison of China and Japan proposal in the high-speed railway project Jakarta Bandung in Indonesia

	China	Japan
Total Cost	US\$5.5 billion (IDR 74.3 trillion)	US\$6.2 billion (IDR 83.7 trillion)
Government Commitment	No guarantee from government or state budget Business to business deal	Government guarantee (50% of project value) and financing from the state budget
Business Concept	25% equity, 75% loans from CBD Loan terms: 40-year, 10-year grace period	75% loans from JICA, 25% state budget Loan terms:40-year, 10-year grace period
Financing	60% US\$, 2% interest per year 40% RMB, 3.46% interest per year	100% yen, 0.1% interest per year (government loan)
Construction	Excavation 16.6km Landfill 40.5 km Raised 70.5 km	Excavation 24.22 km Landfill 34.58 km Raised 39.2 km



	Tunnels 22.9 km	Tunnels 42.14 km
Railway track	150.5 km of track Route: Gambir-gedebage 8 stations <i>The revised version:</i> 142.3 km of track Route: Halim-Karawang-Walini-Tegalluar (4 stations)	140.14 km of track Route: Dukuh Atas – Gedebage 5 stations
Speed	350-380 km per hour	320 km per hour
Ticket Price	IDR 200,000 (US\$ 14.8)	IDR 200,000 (US\$ 14.8)
	Begin construction in 2016 Completed 2018 Operational 2019	Begin construction in 2016 Completed 2019 Operational 2021

Source: Content and data from Indonesian Railway Company.

The table above has revealed China's strength in comparison with Japan proposal. This leads China to handle the project of high-speed railway project Jakarta Bandung. It can be clearly seen that the total cost offered by China comparatively cheaper than Japan. China's proposal was only costing US\$5.5 billion while Japan was more expensive costing around US\$6.2 billion.

Interestingly, China offers full responsibility in covering all budgets in the project while Japan asks Indonesian government to fund 50% of total budgeted project cost. This is completely great consideration for Indonesian government as the government also want to build another infrastructure in other areas based on Nawa Cita.⁴ Japan's business model and regulations have made it impossible [for Indonesia] to give a concession credit to Japanese companies. Besides, the construction, planning is also very important, the total excavations that China plan is only 16.6 km, and it 8 km shorter than Japan's plan. On the proposal, China offers 8 route stops while Japan offers only 4 stops. Actually, what China planned was what Indonesian government wanted. Nonetheless, Indonesian government has revised the stops from 8 to 4 after the acceptance.

The speed of the high-speed railway Jakarta Bandung that China offer on the planning and the proposal was considered to be faster in comparison with Japan. The speed of China's railway is 380km/hour while Japan was only 320km/hour. The last strength that became Indonesian government consideration on choosing China to undertake the project was about the time of the construction. It stated that China will take three years from construction to operation while Japan provided more than five years' timeline.

This analysis is also supported by the statement form Indonesian government. It is stated that Indonesian government did not want to use any state funds for the project. This was completely in contrast with Japan proposal (Tiezzi, 2015). At the end, it appears it was the financing question that decided the issue in China's favor. Indonesia's National Development Planning Minister at the time, Sofyan Djalil told Japan's chief cabinet secretary, Yoshihide Suga, that Indonesia's wish to see the project completed under a business-to-business model (without any guarantee of funding from the state) precluded Japanese involvement. Japanese companies would not be able to meet that requirement (Salim, 2015).

Weakness

Event though China's bid was stronger than Japan, that doesn't mean China's bid, was without any form of weakness in the proposal or in the process of construction. There are several factors which can be considered as the Weakness. This can become a threat for China and Indonesia if China cannot handle it properly.

⁴ Nawa Cita is the main goal of Indonesian government under the leadership of President Joko Widodo. It aims to accelerate economic in undeveloped area such as Papua and several provinces in the eastern of Indonesia.

Firstly, about 90 percent of that project was conducted by Chinese contractors, and the Indonesians had complained about the low quality of Chinese equipment, unqualified Chinese contractors, poor service maintenance and delayed completion (Salim, 2015). At the same time, there were also complaints from the Chinese contractors that the bidding price set by the Indonesian government was too low by international standards. This had to be resolved by extension in quality reduction (Salim, 2015). With regards to the delay, they drew attention to Indonesia's notoriously lengthy land acquisition process, and argued that the Indonesian government had failed to ensure land provision on time and this was what caused the construction delays.

There is also a misperception about China in Indonesia. This is because there are numerous poor quality Chinese goods sold Indonesia. This has affected the highspeed railway Jakarta Bandung project. This is a complete challenging to China as a country should prove that the quality is a priority for the Indonesian project. Secondly, PT. KCIK asked Indonesia government to play an important role if the project failed. The Indonesian government is firmly responding to the request and declining it due to Indonesian regulation. From the beginning, Indonesian government has committed to avoid using national budget to construct this project. But, then China's company does that.

These two requests made Indonesian government rethinking about Jakarta-Bandung Fast Train project. Meanwhile, there are a great number of requirements that should be fulfilled by the China's company. For example, AMDAL, engineering design, special landscape planning, and basic requirement constructions. Nevertheless, not all Chinese investments had been criticised. Some infrastructure projects built by China have been successful, for example the Suramadu bridge linking East Java and Madura (Amin, 2016).

Opportunity

For Indonesia, it considered the high-speed Jakarta-Bandung railway project as opening up more opportunities to accelerate infrastructure development agenda and with the hope of boosting the slowing economy.

For China, the railway project opens opportunities to increase its infrastructure exports, strengthen its economic influence in Indonesia and the region, and secure long-term returns. It will also serve as a test for China to convince potential buyers that they can build an integrated and high-quality railway system with competitive prices. Further opportunities for China and Indonesia in terms of the high-speed railway project Jakarta Bandung can be clearly seen from the table given bellow.

Table 3: comparison parameter between Indonesia and Japan to see opportunities for Indonesia

No.	Parameter	China and Indonesia Consortium	Jepang
1	Business Concept	Joint Venture Company (JVC) Indonesia (60%) and China (40%). Risk Project: Joint Venture Company (JVC)	Engineering, Procurement, and Construction (EPC). Financing (ordinary contractor), risk: government
2	Procurement of Land	Indonesian Government does not have responsibility to procurement of land	Indonesian Government needs to take part in procurement of land
3	Local Content	58.6%	40%
4	New Job Creation	During the period of construction: 39.000 people a year. Chinese workers who will engage in the project are only expert staff and supervisor	During the period of construction: 35.000 people a year. Some of them are Japanese workers

5	Technology	Siemens Technology which is developed in China since 2003. Speed: 350km/hour and max 380km/hour. This technology is suitable for tropic weather. High speed railway technology system is opened	Japan, since 1964. High speed railway technology system is closed
6	Transfer of Technology	Through fabric construction of Rolling Stock in Indonesia	No program mentioned in transferring technology

Source: PT. Kereta Api Indonesia

According to the table shown above, it can be seen that more opportunities can be obtained by Indonesia when it's decided to award China the project. It is also because China offers Joint Venture Company (JVC) which is almost 60% ownership by Indonesia and the rest for China. Risk Project will be a responsibility of the Joint Venture Company (JVC). This means that government does not bear any risk of the project in case the project fails. On the other hand, Japanese mechanise asked government to bear part of the cost if the project failed. Meanwhile the project will be financed through a Chinese loan, without aid from the Indonesian State Budget. China Development Bank will provide approximately 75% of the funding, and the rest will be arranged by the joint venture partners. The loan will be for a 40-year period, with a 10-year grace period.

Besides, Indonesian government does not need to be involved in procurement of land when China handles the project. Nonetheless, Japan asked Indonesian government to take part in procurement of the land for the project. The high-speed railway project under China construction will create 4,000 jobs in comparison with Japan. The technology China offered was apparently opened, not like Japanese technology which was closed. Indonesia can take this technology for further and other development in other area after completion of the project. Moreover, Indonesian government will take more opportunities as China is guarantying Indonesia transfer of technology in the project. It does mean that Indonesia will take advantages by choosing China without taking money from government purse.

Threats

After the ground-breaking ceremony in January 2016, construction of the Jakarta-Bandung high-speed railway had to be suspended due to issues related to paperwork as well as revisions that had to be made to the project's development plan. There also surfaced reports that land procurement and a shortage of funds exacerbated the situation. Critics consider the project an odd choice as existing infrastructure between both cities are relatively adequate (railway and roads) while the route is not that critically important for business. Indonesia is plagued by inadequate infrastructure (both in quality and quantity) causing high logistics costs while making the country's investment climate less attractive. It also causes social issues as it limits people's access to healthcare. (Indonesia Investment, 2015)

This has become a threat for Indonesia as if the project failed or not continued, it will completely make Japan's see Indonesian government as an inconsistent country for deciding the development project. It is because Japan has offered the proposal earlier with more realistic implementation and covering risk with governmental fund.

CONCLUSION

China's foreign policy with Indonesia can be clearly seen from how China tries to lobby Indonesia in several projects or programs. It has actually been happening several years before the leadership of Joko Widodo. For example, the construction of Suramadu Bridge was constructed when Susilo Bambang Yudhoyono took Indonesian presidential seat from 2004 to 2014. Moreover, when Joko Widodo took power in 2014, the relation between Indonesia and China has becoming closer. With the focus of infrastructure development, transportation

construction, and building port on numerous parts in Indonesia, China's government is doing an "expansion" easily to handle several projects in Indonesia.

With the same perception in maritime policy, it makes China easy to have a high-speed railway project Jakarta Bandung. The consideration was actually not only the same perception. There are several factors why China succeeded in convinces Indonesia in the Jakarta Bandung high-speed railway project. Xi Jinping was active in promoting its railway company to Indonesia. As it stated on the economic and business theory, the success of business depends on the marketing, and marketing depends on a good and persuasive salesman. That is why Indonesia chooses China to handle the project. Moreover, the fast-growing domestic railway in China has built trust in a number of countries. It seemingly proves that China is expert in handling the project.

RECOMMENDATION

According to the result using SWOT analysis, the author has concluded that threats and weakness should be taken care of so as not to affect the smooth running of the project. Therefore, several recommendations have been offered to strengthen China in order to succeed in the Railway Project.

- China and Indonesia should build much closer relationship, not only in a scope of Government to Government, people to people relationship. This aims to get mutual understanding between two countries as people perspective in Indonesia can influence its public policy.
- Sino-Indonesian relation should be strengthening through Eminent Person Group Project. This scheme has already implemented in relations with India and Malaysia. The result was satisfied as it will change the negative tone in bilateral relation be it neutral or positive in order to strengthen relations.
- Soft diplomacy should be improved between two countries. The public diplomacy or soft diplomacy between two countries should be improved. For example, cooperation in the areas of research and education should be improved between two countries. Furthermore, cultural exchange should also be improved.
- China should also have a good strategy in understanding current condition in Indonesia. Recently, the sense of nationalism is apparently increasing due to political conditions. Many protest in social media and several places happened due to China's company. Therefore, China should set more strategies to give a deep understanding for Indonesian citizen. This will be beneficial to both countries, and not only to China.
- China should strengthen its media perception in Indonesia. By strengthening its media perception, China will have its dominant and has a good reputation in Indonesian perspective.

REFERENCES

- Amin, K. (2017) *Eyes Asian Power House China Expand Investment*. [Online]. Available from: Jakarta Post <http://www.thejakartapost.com/news/2016/03/01/eyes-asian-powerhouse-china-expands-investments-ri.html> [Accessed 14 January 2017].
- Artharini, I. (2016) *Dua Poin Mendasar yang Membuat Pembangunan Kereta Cepat Tertunda*. [Online]. Available from: BBC Indonesia http://www.bbc.com/indonesia/berita_indonesia/2016/01/160128_indonesia_izin_keret_cepat [Accessed 11 January 2017].
- Asian Insight (2017) *China Bumishes Image with Indonesia Deals puts Japan in Shadow*. [Online]. Available from: <https://asiainsight.mni-news.com/posts/china-burnishes-image-with-indonesia-deals-puts-japanin-shadow-9832> [Accessed 12 January 2017]

- Chan, G. (2016) China and global governance. [Online]. In: *China's High-speed Rail Diplomacy: Global Impacts and East Asian Responses*, University of Auckland Australia. Available from: http://www.eai.or.kr/data/bbs/eng_report/2016021517332269.pdf [Accessed 11 May 2017].
- Chang, F. K. (2016) Who Benefits from China's One Belt, One Road. [Online]. Foreign Policy Research Institute. Available from: <http://www.fpri.org/2016/10/benefits-chinas-one-belt-one-road-initiative> [Accessed 3 January 2017].
- China Embassy in Indonesia (2016) *China Launch Jakarta-Bandung High-Speed Railway Project*. [Online]. Available from: Embassy of People's republic of China in the Republic of Indonesia <http://id.china-embassy.org/eng/zgyyn/t1334525.htm> [Accessed 13 January 2017].
- China Mike (n.d.) *China Planned High-Speed Rail Map*. [Online]. Available from: <http://www.china-mike.com/wp-content/uploads/2011/04/china-planned-high-speed-rail-map.gif> [Accessed 18 January 2017].
- Huwaxia (2016) *China Launch Jakarta-Bandung High-Speed Railway Project*. [Online]. Available from: Xinhua News http://news.xinhuanet.com/english/2016-01/21/c_135033018.htm [Accessed 12 January 2017].
- Indonesia Investment (n.d.) *Construction Jakarta-Bandung High-Speed Railway Project to Start?* [Online]. Available from: http://www.indonesia-investments.com/zh_cn/news/todays-headlines/construction-jakarta-bandung-high-speed-railway-project-to-start/item7075 [Accessed 27 December 2016].
- Indonesia Investment (n.d.) *China to Build Indonesia's High-Speed Railway Jakarta Bandung Project*. [Online]. Available from: <http://www.indonesia-investments.com/news/news-columns/china-to-build-indonesia-s-high-speed-railway-jakarta-bandung-project/item6041> [Accessed 13 January 2017].
- Indonesia Investment (n.d.) *Jakarta Bandung Railway Train Indonesia Investments*. [Online]. Available from: <http://www.indonesia-investments.com/upload/images/Jakarta-Bandung-Railway-Train-Indonesia-Investments.png> [Accessed 25 December 2016].
- Kereta Api (n.d.) *Kereta Cepat Jakarta-Bandung, PT. Kereta Cepat Indonesia-China*. [Online]. Available from: https://kereta-api.co.id/media/content/profil_kereta_cepat.pdf [Accessed 11 February 2017].
- Kun, L. (2015) China to Win Indonesian High-Speed Rail Project through Own Advantages. [Online]. Available from: <http://english.cntv.cn/2015/08/24/ARTI1440398097478567.shtml> [Accessed 14 January 2017].
- Ministry of Commerce, Indonesia (n.d.) *Neraca Perdagangan dengan Derah Mitra Dagang, Kementerian Perdagangan Republik Indonesia*. [Online]. Available from: <http://www.kemendag.go.id/id/economic-profile/indonesia-export-import/balance-of-trade-with-trade-partner-country?negara=116> [Accessed 15 January 2017].
- Railway Technology (n.d.) *China High Speed Railway Revolution*. [Online]. <http://www.railway-technology.com/features/feature124824/> [Accessed 15 January 2017].
- Railway Technology (n.d.) *Jakarta to Bandung High-Speed Rail, Indonesia, Railway Technology*. [Online]. Available from: <http://www.railway-technology.com/projects/jakarta-to-bandung-high-speed-rail/> [Accessed 17 January 2017].
- Salim, W. and Yosuf, I. (2016) Institute Perspective, the result of Interview with Mr. Nasri Sebayang, Director of Construction and Renewable Energy, PT PLN (Persero). [Online].

- Available from: https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2016_16.pdf [Accessed 29 January 2017].
- Salim, W. and Negara, S.D. (2016) Why is the High-Speed Rail Project so Important to Indonesia. [Online]. *Yousef Ishak Institute*, ISEAS No. 16. Available from https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2016_16.pdf [Accessed 11 May 2017].
- Salim, W. (2015) Yosuf Ishak Institute Perspective. Interview with Mr. Wang Liping, Minister Counsellor, Chinese Embassy Jakarta.
- Smith, K. (2017) *China Railway sets out 2017 targets*. [Online]. Available from: <http://www.railjournal.com/index.php/financial/china-railway-sets-out-2017-targets.html> [Accessed 10 March 2017].
- Suryadinata, L. (1990) Indonesia-China Relations: A Recent Breakthrough. *Asian Survey*, 30(7), 682-696.
- Storey, I.J. (2000) Indonesia's China Policy in the New Order and Beyond: Problems and Prospects. *Contemporary Southeast Asia*, 22(1), 145-174.
- Tiezzi, S. (2015). *It's Official: China, Not Japan, Is Building Indonesia's First High-Speed Railway*. [Online]. Available from: The Diplomat. <http://thediplomat.com/2015/10/its-official-china-not-japan-is-building-indonesias-first-high-speed-railway/> [Accessed 13 January 2017].
- Xinhua (2013) *China, Indonesia Aim for \$80b in trade by 2015*. [Online]. China Daily. Available from: http://www.chinadaily.com.cn/business/2013-10/03/content_17009201.htm [Accessed 29 January 2017]
- Xinhua (2015) *Chinese Private companies to invest \$5b in Indonesia*. [Online]. China Daily. Available from: http://www.chinadaily.com.cn/business/2015-04/21/content_20497616.htm [Accessed 29 January 2017]
- Xinhua (2015) *Zhongguo jai miaozun guoji zuzhi, 中国再瞄准国际组织*, Xinhuanet. [Online]. Available from: http://news.xinhuanet.com/herald/2015-04/20/c_134167266.htm [Accessed 5 February 2017]

1-CA15-1122

INDIVIDUAL PSYCHOLOGICAL CHANGE IN A MASS MEDIA SOCIETYDR. TIJANA MANDIC¹ AND DR. DIVNA VUKSANOVIC

This paper examines a theoretical concept known as “Ten Molds of Change”, invented and developed at FDA (University of Belgrade) and followed up and tested over the years since 1985 (Mandic, 1990).

We have used the model to define, evaluate and facilitate individual change perceived differently by psychologists. It ranges from Freudian point of view, that change in an individual psychological structure is an illusion, to Skinnerian extreme optimism about change through learning (Freud, 1930, Skinner 1971, Watzlawick, 1974). Our viewpoint takes the middle position, between the mentioned ones. In the previous research, we have found correlation between personality structure, clinical diagnosis and favorite model of change.

10 STORIES

	GOOD ME	BAD ME	NOT ME	LIFESTYLE
<i>10. Chronos</i>	Life	Death	Existence	Reality-oriented
<i>9. Dionysius</i>	Gratification	Deprivation	Joy	Baby
<i>8. Salome</i>	Truth	Lie	Acceptance	Being Right
<i>7. Phoenix</i>	Success	Failure	Respect	Driver
<i>6. Pygmalion</i>	Construction	Deconstruction	Play	Getter
<i>5. Nemesis</i>	Revenge	Forgiveness	Trust	Victim
<i>4. Brutus</i>	Obedience	Disobedience	Bonding	Controlling
<i>3. Chimera</i>	Fragmentation	Wholeness	Identity	Liked
<i>2. Hermes</i>	War	Peace	Awareness	Opposed
<i>1. Cosmic Egg</i>	Order	Chaos	Transcendence	Superior

During the years of follow up in the mass media society, we observed that the preferred model of change leaned towards narcissistic and psychopathic ones (Mandic, Vuksanovic 2017).

Key words: individual, change, model, mass media society.

¹ Dr. Tijana Mandic, Professor, FDU.

5-CA21-1135

THE REFUGEE CRISIS: REEVALUATING THE ROLE OF THE STATE IN TRANSNATIONAL MIGRATION CONTROLDR. SIEGLINDE POMMER²

Over the past decades, as the number of forcibly displaced persons has reached unprecedented levels around the world, and more recently as another wave of mass influx poured into Europe, new efforts have been made by states to control their borders, restrict immigration, and engage in cross-border law-enforcement and surveillance. Controversy about how to cope with migrants among host countries as well as concerns related to security and territorial sovereignty take priority over concerns over the plight of others certainly influencing these attempts at regulating transnational migration and the access to asylum.

With states increasingly making use of global governance modes, core exercises of public authority, such as migration control, are increasingly conducted extraterritorially, outsourced to foreign governments or delegated to non-state actors. Transnational challenges such as irregular maritime migration have actually provided new opportunities for power projection beyond the borders.

Capitalizing on the struggle by governments to manage migration, migration also turned into business. From the rapid growth of specialized transportation and labor contracting companies, to multinational companies managing detention centers or establishing border security, to the organized criminal networks profiting from human smuggling and trafficking, there is a growing commercialization of international migration.

These new forms of cooperation and fragmented state power raise difficult questions about divided, shared and joint responsibility under international human rights law at a regional and global level, as well as growing transnational law enforcement. They place new demands on refugee law and new spheres of protection are emerging.

Reevaluating the role of the state and limits of state control in coping with the global challenge of international migration, we discuss contemporary issues of how refugee law shapes international relations, including how the security prism has been used to fashion asylum into a security issue without regard to an actual threat, the use of detention as an central tool of migration management, the appointment of new gatekeepers, and the important consequences of a growing migration industry.

7-CA25-1143

WOMEN IN POLITICS: FOX NEWS INFLUENCE ON VIEWER'S PERCEPTION OF HILLARY CLINTON?MS. LEAH WALSH³

This research examines whether the media's characterization of women in politics affect viewers perceptions of female candidates. More specifically, the research explores whether viewers of FOX NEWS were influenced by the network's coverage of Hillary Clinton in 2016. According to the literature and previously conducted research, the media contributes to the reinforcement of gender stereotypes and repeated gender bias. Given that Hillary Clinton has spent the last 30 years of her life in public service, some could argue that most viewers'

² Dr. Sieglinde Pommer, Post-doc Researcher, Yale Law School.

³ Ms. Leah Walsh, Student, East Stroudsburg University.

perceptions were shaped long before the presidential election. Hillary Clinton faced harsh scrutiny in her campaign in spite of her campaigns efforts to avoid this. Hence, using survey research and personal interviews, this research will oversample younger viewers of FOX NEWS to determine whether the network's coverage of Hillary Clinton influenced their perception/ opinion of her. Research has shown that negative media coverage often leads to negative perceptions, and positive coverage could lead to neutral/ positive perceptions. The direction (negative/positive) of viewer's perceptions of Hillary Clinton is beyond the scope of the current research. However, it is the next logical step in my research that could be addressed in future works.

8-CA14-1078

REMAKING A CULTURAL MODE OF SCRIPTURE-DISSEMINATING: A CASE OF BUDDHIST CULTIVATION FROM TZU CHI SECT IN CONTEMPORARY TAIWAN

MR. KAI-WEN CHENG⁴

In contemporary Taiwan, Socially Engaged Buddhism such as Tzu Chi Sect, Buddha's Light Mountain and Dharma Drum Mountain have developed both into local and global context among Chinese Buddhism. Although these groups are also classified in the same category, however, their several approaches of religious teachings and practices are diverse, particularly in their multi-cultural types for scripture-disseminating. It is crucial to study this modern phenomenon within a new dimension for the issue about Buddhist revival.

Further, how to popularize religious scriptures and spread the significant doctrines in a secular society at present? This paper attempts to explore the cultural mode of disseminating the Buddhist scriptures as a cultivated approach from Tzu Chi system, discussing their characteristics and interpretations. Lay practitioners of Tzu Chi have been reproduced a creative form within a combination of numerous elements including Buddhist scriptures, traditional stories, current events, photos, videos, art, music, dramas, sign languages, body movements, media and modern technologies. A feature of cohesion and identity were displayed in this kind of Buddhist cultivation with Tzu Chi's symbols shaped by body movements from hundreds followers at the stage. In this case, Buddhist dharma can be understood not only through textual reading and philosophical preaching but also demonstrated the meanings through bodily interpretations. Based on that compound type, both rational and emotional functions can be achieved. However, is it a performance or a type of Buddhist cultivation? This new form might be controversial between art and religion. This research analyzes the key concept from Master Cheng Yen, the Tzu Chi's founder and spiritual leader, and seeks to point out its external form and internal meanings.

In the past, scholars commonly take social or organizational approach to study Socially Engaged Buddhism particularly explore to Tzu Chi, dimension of religious texts and the form of cultural creativity are easily overlooked. Thus, in addition to textual analysis of Buddhism, this study is also based on specific images/symbols from Tzu Chi's visual materials and the participant observation during field work. In order to discover a transformative mode of relevant Chinese Buddhist culture in contemporary Taiwanese society among East Asian cultural sphere, if this analysis can be reconsidered as I argued, a different dimension would be possibly contributed to contemporary Chinese/Humanistic/Engaged Buddhism and Tzu Chi studies in the future.

Keywords: Buddhist Scripture, Buddhist Cultivation, Religious Culture, Tzu Chi Sect, Taiwan

⁴ Mr. Kai-wen Cheng, Ph.D. Candidate, National Chengchi University.

10-CA24-1137

HOW EXPERIENTIAL LEARNING ENHANCES EDUCATION IN POLITICAL SCIENCEMR. CHRISTIAN COLON⁵

This presentation explores David Kolb's Experiential Learning Theory (ELT) which has been a widely accepted and practiced theory among educators, in supplementing and providing support for classical, and traditional learning styles. This research, elaborates on Experiential Learning Theory, through an experiential study, not dissimilar from those previously examined by other scholars and academics in the field.

The research uses post-survey methods of data collected from students who participated in a Washington D.C. experiential learning program. Students from two undergraduate universities came to Washington D.C. in January of 2017 to witness the Presidential inauguration as well as take part in a 2 week academic program focused on civic and political education. Various Presenters and Speakers from all areas in the realm of politics spoke at these events, as well as site visits throughout the two weeks to important institutions throughout the Washington D.C. area. The research focuses on a diverse group of students from East Stroudsburg University who attended the program for the full duration of the two weeks, with additional academic requirements for the spring 2017 semester.

The survey method uses a scale of 1 to 5 in terms of agreement. Where 5 is Strongly Agree and 1 is Strongly Disagree. 3 is neutral to the question. This encourages further analysis to whether students perceive experiential education as helping the learning process. There are also certain demographic, and other questions in which only a yes or no is provided. A comments section is also provided for additional views, opinions, and comments not mentioned or elaborated upon within the questionnaire.

This program, when coupled with the previous classroom instruction at the home institution of education within the department of Political Science, and upon academic requirements drawing upon that experience, can be analyzed according to David Kolb's Experiential Learning Model. Through the use of the model, and data; the researcher is able to draw upon a conclusion concerning education and experiential learning.

The expectations for the research and preliminary findings indicate support for David Kolb's theory of Experiential Learning Theory. Such experiences when coupled with classroom learning, seems to provide greater motivation for learning and campus engagement. These expectations contrast against the classical approach to learning and education, predominant within most colleges and universities.

15-CA07-1033

EXTENT OF CONTRIBUTIONS OF MORTGAGE BANKS IN THE PROVISION OF HOUSING LOAN SCHEME FOR ECONOMIC DEVELOPMENT IN ENUGU METROPOLIS

⁵ Mr. Christian Colon, Student, East Stroudsburg University.

MS. NNEOMA OSAKWE⁶ PROF. MELLITUS EZEAMENYI

The purpose of this research work was to identify the extent to which mortgage banks in Enugu State conformed to central banks' stipulated credit guidelines; the extent to which they give out medium and long term loans; and identified the challenges inhibiting loan disbursement by mortgage banks to residents of Enugu Metropolis. This study was carried out in Enugu Metropolis with 22 mortgage banks managers making up the population of the study. All 22 mortgage bank managers were adopted for the study and each of them was administered a structured questionnaire. The data collected from them were presented in tables and mean was used for the analysis. It was found out that- to great extent- mortgage banks conform to most of the central banks' guidelines; mortgage banks gives out medium- term loans to a little extent to the residents of Enugu Metropolis; mortgage banks in Enugu Metropolis give out long- term loans in great extent, and some constraints (such as low interest rate on National Housing Fund, bureaucracy, inadequate housing funds, etc) inhibits loan disbursement by mortgage banks to residents in Enugu Metropolis. It was recommended that mortgage banks should be encouraged by making more funds available through National Housing Funds and citizens saving deposits. It was also recommended that the process of obtaining the loans should be simplified and lastly that corruption should be curbed within the mortgage loan system.

17-CA22-1138

EVIDENCE FROM THE ENTREPRENEURIAL ACTIVITY AT THE NATIONAL LEVEL

MR. CHANGHYEON SONG⁷

Entrepreneurship gets more attention for its role as a solution to economic revitalization. Researches about factors affecting the entrepreneurial activity rate at the country level are actively under way. Previous studies commonly focused on economic factors such as the level of economic development of the country. Recently, however, there is an increasing tendency to investigate environmental factors such as national culture and social institutions. This study reveals how differences in national culture and social security rate influence both type and rate of entrepreneurial activity. We focus on two types of institutional factor: uncertainty avoidance and individualism from the national culture dimensions proposed by Hofstede as an informal institutional factor and social security as a formal one. Prior studies in entrepreneurship have conflicting results about the impact of social security on entrepreneurial activity rates. Most of the results indicate that social security crowd out entrepreneurial activity because it may increase the opportunity cost for starting a business. On the other hand, some researchers argue that social security might have positive effect on entrepreneurial activity by giving a safety net. Meanwhile, there are few studies examining the effect of the national culture and social security simultaneously. And studies about interaction between two factors are also rare, even though the national culture and the social institution are closely related.

To answer these research questions, we conduct panel GLS using country-level data from the Global Entrepreneurship Monitor (GEM), the World Competitiveness Yearbook, the Hofstede's national culture dimensions and the World Bank. Our findings indicate that the effect of social security on entrepreneurial activity rate is dependent on entrepreneurial activity type. In other words, social security is positively correlated with the improvement-driven entrepreneurial activity while negatively correlated with the necessity-driven entrepreneurial activity. This is why previous studies had mixed results. The results also show that the

⁶ Ms. Nneoma Osakwe, Student, Texila American University (TAU).

⁷ Mr. Changhyeon Song, Ph.D Candidate, Seoul National University.

country's social security level moderates the relationship between national culture and improvement-driven entrepreneurial activity rate. In countries with well-established social security systems, the negative impact of uncertainty avoidance on entrepreneurial activity is decreased and the positive impact of individualism on entrepreneurial activity is also decreased. These implies that social security can alleviate the risk of starting a business in risk-averse countries and can also act as a disincentive for entrepreneurship in highly individualistic countries.

Keyword: Entrepreneurship, Social security, Hofstede's national culture dimension, Global Entrepreneurship Monitor(GEM)

18-CA26-1115

WRITING PRACTICES AND THE IMPACT ON COLLEGE AND CAREER READINESS AND SOCIAL WELFARE

MS. LATOYA MCINNIS⁸

The purpose of this research is to examine the effects of writing on student success in college and related careers and the impact on social welfare at a selected school district. The dataset for this study includes archival records collected from the U.S. Census Bureau, U.S. Department of Labor, Georgia Department of Education, and Clayton County Public Schools: population, youthful employment and unemployment rates, dropout and graduation rates, student demographics, percentage of students meeting or exceeding the writing standard, number of students tested by race/ethnicity, mean scale score, and aggregate outcomes. The data was then subjected to a comparative qualitative case study analysis of selected Georgia school districts. The guiding research questions are: 1) Do the Georgia writing assessments address critical writing skills that contribute to student success in college and future employment? 2) How do Georgia's writing assessments compare to comparable areas? 3) Has the writing assessment improved social welfare (i.e., dropout and graduation rates, college attendance rates, youthful employment, etc.)? 4) How does the 21st Century Model contribute to the improvement of student performance and teacher instruction? This study is significant as it further contributes to the body of literature on the impact of writing skills on social welfare, while drawing attention to the need for further research on the current writing abilities among American students.

⁸ Ms. Latoya McInnis, PhD Student, Clark Atlanta University.

LIST OF LISTENERS

MR. OUDOM TEM

CONFERENCE COMMITTEE MEMBERS

**Dr Poomintr
Sooksripaisarnkit**
Assistant Professor
City University of Hong
Kong
Hong Kong SAR

Dr Ramandeep Chhina
Assistant Professor
Heriot-Watt University
United Kingdom

Dr Rajesh Sharma
Assistant Professor
City University of Hong
Kong
Hong Kong

**Prof. Tshepo Herbert
Mongalo**
Associate Professor
University of the
Witwatersrand
South Africa

Dr Zhixiong Liao
Lecturer
University of Waikato
New Zealand

Ms. Florence Simbiri-Jaoko
Lecturer
University of Nairobi
Kenya

Dr Avnita Lakhani
Assistant Professor
City University of Hong
Kong
Hong Kong

**Dr Monika WIECZOREK-
KOSMALA**
Assistant Professor
University of Economics in
Katowice
Poland

Dr Indianna Minto-Coy
Deputy Director of Mona
ICT,
School of Business and
Management
Jamaica

Dr Joanna Blach
Assistant Professor
University of Economics in
Katowice
Poland

Miss Kate Masih
Lecturer
London South Bank
University
United Kingdom

Dr Bashar Malkawi
Associate Professor
University of Sharjah
UAE

Ms. Mercy Khaute
Assistant Professor
University of Delhi
India

Dr Jamil Ammar
Research Fellow
Rutgers Law School
USA

Dr Zinatul Zainol
Associate Professor
Universiti Kebangsaan
Malaysia
Malaysia

Dr Nitin Upadhyay
Associate Professor
Goa Institute of Management
India

FLE Learning Ltd
Conference Division

T: 0044 131 463 7007 F: 0044 131 608 0239

E: submit@flelearning.co.uk W: www.flelearning.co.uk