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Artificial Intelligence, Law and Society: A Brief Perspective

Dr. Malay R. Patel, , Associate Professor of Management, UWSL

Access to justice is of utmost importance in society, in some cases access to justice is also considered to be a basic human right. However, in many countries the judicial system and its stakeholders are generally understaffed. Due to this extreme shortage in the judicial staff it is most common to see that cases taken to court progress with extreme delays and judgments are delivered years after a case is filled. Thus, acquiring legal representation to file and defend cases in court differs in different countries; this process of legally authorized route can be a tedious, lengthy and costly affair. Additionally, there might be countless controversial decisions, or cases where prejudice from the lawyers, judges, jury etc. are clearly evident. Due to such lacunae in terms of efficiency and effectiveness of the judicial system worldwide, there could be some interplay between law and artificial intelligence to improve overall productivity and value of the contemporary judicial systems globally.

Robots are the creative outcomes of artificial intelligence which present the possibility of positive impact in many aspects pertaining to the processes of the judicial system, as automation outperforms humans and increases productivity. (Manyika et. al., 2017). Remus and Levy (2016) consider that due to utilization of new legal technology there can be 13 % decline in lawyers' hours. This automation can enable more rapid clearing of judicial cases with minimum bottlenecks and delays.

In 2015 a chatbot DoNotPay was developed which facilitated people to utilize it in order to appeal unfair parking tickets which if operated by human lawyers would be much more costly than paying the ticket. In April 2016 it was revealed that the DoNotPay robot had helped people turn over 160,000 of 250,000 parking tickets since its launch at a success rate of 64% (Gibbs, 2016). Since then, the same robot has acquired more skills and for instance now it can help refugees in the UK, US and Canada to fill in applications or appeal for asylum support. Access to legal expertise may overall assist both the judicial system as well as the public perception of justice. Especially if robots become responsive, they may get competent in analyzing and understanding more complex situations that go beyond the doctrinal view of law, towards considering the interplay of society, politics, law and economics. Hence, with vast instant access to the world's knowledge, judicial functions may be carried out more effectively and it can minimize human biases. Thus, the robot could also act as a judge (Rutkin, 2014), and potentially serve more objective decisions rather than subjective decisions. Such considerations pertaining to the robot as a lively stakeholder in the judicial system has far reaching connotations as one could consider one step further. If robots could take decisions according to the law, free of bias and have the collective knowledge of all cases, why not have the robots as legislators? That could lead to potentially more just laws, potentially free of inequalities (e.g., gendered, racist, castiest views) as robots may be able to detect and filter-out such unique and distinct patterns. However, voices of concern have been raised as "bringing machines into the law could imbue us with a false sense of accuracy" (Rutkin, 2014).

Artificial intelligence (AI) and law intersect on many levels and layers. AI may help in influencing legal practice by making lawyers more efficient in their job. Additionally, it may help to design and define laws. Efficiency in the legal field can be improved using AI there is no doubt about it. However, extensive legal research is needed on a global level in order to determine social repercussions of implementing AI and robots in our everyday lives.

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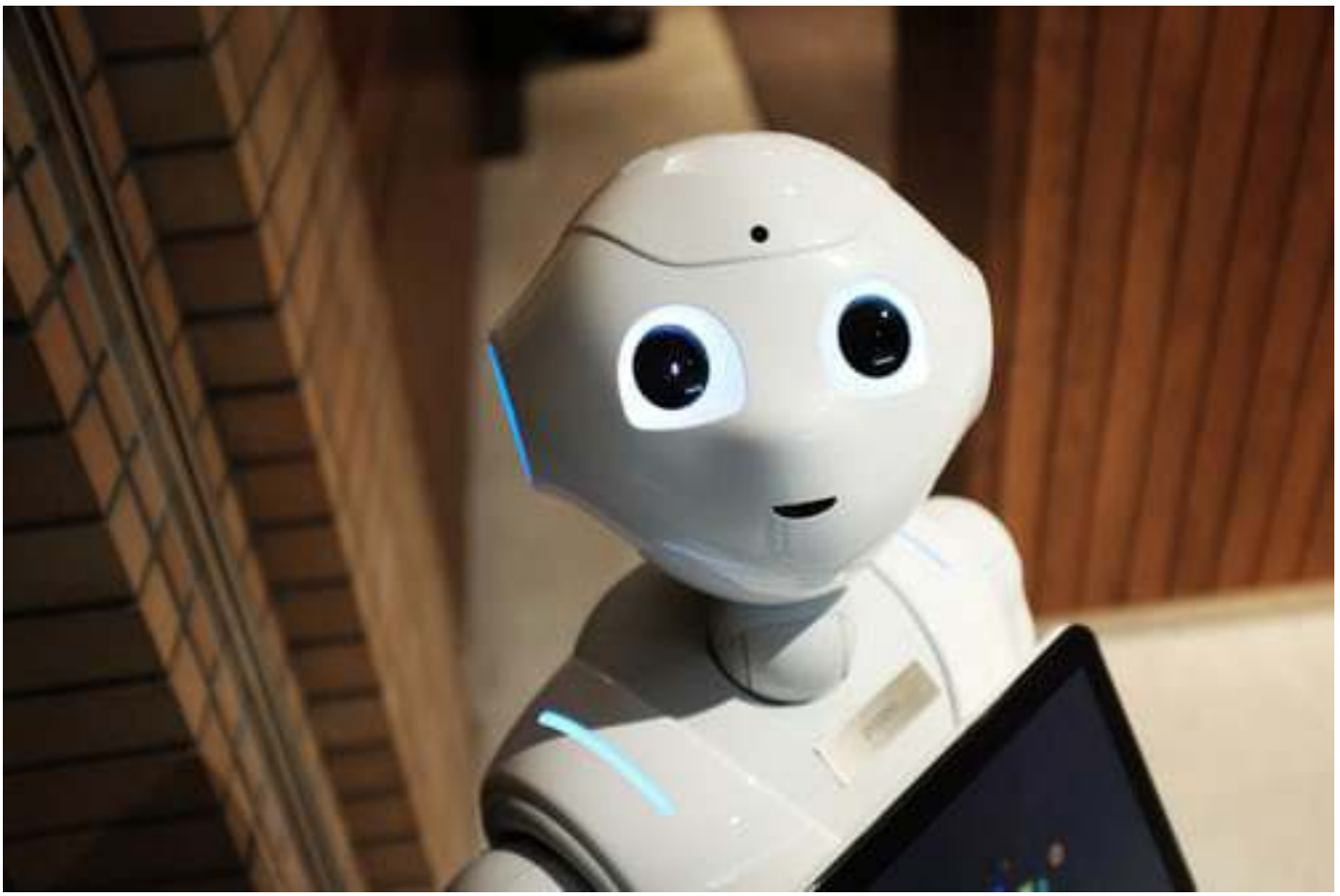

Cries from our nonhuman friends for stricter laws on cruelty

Prakhar Pandey, Assistant Professor, UWSL

In yet another shocking and disturbing account of human cruelty on animals, on Jan. 22, 2021, a forty-year-old elephant passed away. The elephant had wandered off into a human habitat in Masinagudi in the Nilgiri district of Tamil Nadu and was being chased off by the residents. Things escalated quickly when one of the residents decided to fling a burning tyre at the elephant. Unfortunately, the burning tyre got stuck on the elephant's ear and caused it to run away from the scene trumpeting in anguish. Last year, in June, a pregnant elephant, now popularly known as Saumya, died at Velliyar River in the Palakkad district of Kerala after it ate a pineapple jutted with firecrackers which exploded in her mouth causing severe injuries and poisoning. This incident was widely reported across the country through mainstream as well as social media and caused a major national fury.

Apart from the elephant deaths on account of human brutality, there are many reported incidents of humans treating animals in the most abominable ways. The problem is more systemic than it appears to be. There are laws such as Wildlife (Protection) Act, 1972 and the Prevention of Cruelty to Animals Act, 1960 that guarantee protection of animals, however, the incongruence between the administrative policies and the laws tend to dilute the existing protectionist regime. For example, we have the WLPA that accords the highest protection to elephants under Schedule-I by the virtue of elephant being a 'wild' animal, whereas, on the other hand, the administrative incongruity allows elephants to be owned, making them the only exception among wild animals with the possibility of ownership. Another example, the PCA Act prohibits any form of cruelty upon animals, however, the fine imposed for inflicting cruelty is meager, ranging from Rs. 10 to Rs. 50, and does not create a deterrent effect. Due to negligible action on such incidents, the inhibitions in people have lowered to a great extent and they don't think twice before treating animals cruelly. As a result, in incidents of conflict with animals, locals do not hesitate in taking extreme measures against animals thus resulting in illegal killings such as the recent elephant death incident in Masinagudi.

There has been a lot of clamor around a much-needed amendment to the said laws, various influential people and organizations have written about it. After several directions from the Supreme Court and in light of the recent incidents, the government on 6th Feb, 2021 has finally prepared a draft amendment. Under the said draft, the offences have been categorized under three heads i.e. minor injury, major injury leading to permanent disability and death to an animal due to cruel practice. The fines have been increased ranging from Rs. 750 to Rs. 75,000 based on the nature of the offences. The term of imprisonment has been increased to 5 years. The draft definitely looks promising; however, we are yet to see if this could alter the current trend of the blind-eyed approach towards animal cruelty. Whether the cries of our nonhuman friends have been finally heard? Only time will tell.

Intercountry Travel Restrictions and International Law

Dr. Ramdhass Perumal, Assistant Professor of Law, UWSL

During COVID-19 Pandemic countries introduced travel restrictions and imposed entry and exit bans both on citizens and non-citizens alike. Many got stuck in foreign countries without sufficient means for livelihood. Does it violate peoples' right to freedom of movement under international law? Article 12(2) of the International Covenant on Civil and Political Rights (ICCPR), 1966 requires the members States to ensure that, "[e]veryone shall be free to leave any country, including his own". However, Article 12(3) provides a policy space for States to adopt law imposing restrictions on freedom of movement that "are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant." Hence, the travel restrictions during pandemic may be justified on the grounds of national security, public order or public health.

However, the recent issue of Saudi Arabia's travel ban on people from twenty countries, including India, to enter its territory requires a special attention. In the context of ICCPR, should this selective travel ban be considered discriminatory? Article 4(1) provides that "[i]n time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State Parties to the present Covenant may take measures derogating from their obligations under the present Covenant…provided that such measures…do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin." The provision does not prohibit discrimination based on 'nationality'. Further, under Article 12(3) it is the State which would determine what is necessary to protect national security, public order or public health. However, in either case Saudi Arabia is not a party to the ICCPR. Though Saudi Arabia as a sovereign country has an authority to impose travel ban on any country, a selective ban would have a negative impact on friendlier relations between nations.

Role of victimology in sentencing for the betterment of child rights in the light of skin to skin judgement of Bombay High Court

Prof(Dr.)Debarati Halder, Professor-Legal Studies, UWSL

Rights of children have been considered of prime importance in the world now. The legal education institutions have to mandatorily apprise the students about child rights. It carries such a heavy importance that the nation States are duty bound to extend cooperation when it comes to protection of rights of children even though they may not be having treaties to cooperate in specific matters. Convention on Child Rights which was adopted in 1989 and was made operational since 1990 onwards, had a brief history. Seeing the plight of children affected due to wars including ethnic wars, World wars, physical and sexual exploitation of children etc., due to lack of proper laws and rules, the first formal declaration was made for the protection of the rights of children in 1924 through Geneva Declaration of the Rights of the Child of 1924. Later the rights of the children were given further consideration in Declaration of the Rights of the Child by General Assembly in 1959. Further with the introduction of the Universal Declaration of Human Rights, International covenants on civil and political rights and socio, economic, cultural rights, the concept of child rights was further broadened and this was reflected in the present version of Convention of Child Rights (CRC). A brief analysis of the CRC would show that there are five umbrella rights within CRC : these are Right to life, survival and development under Article 6, Best Interest of children under Article 3, Right against nondiscrimination under Article 2, Right to participation under Article 12 and right to holistic development with the help of available resources that should be ensured by the State under Article 4. Apart from these, the CRC may be studied under three broad heads, which would include these umbrella rights: these heads would include survival and developmental rights, participation rights and protection rights. These heads cover most of the provisions of the CRC that guarantee protection of child rights in all aspects. All these rights that have been summed up under these three broad heads are connected with each other to support the heart of the CRC, i.e., right to life, survival and to uphold the best interest of the children. CRC adheres to the victimological understandings of child rights. Child victims form a unique class. The UN Declaration on Basic Principles of Justice to the Victims, 1985 has also recognized children as vulnerable victims where by the victimhood status of children mayneed more careful handling.

In January 2021 the Nagpur bench of the Bombay High court had passed some judgements which came under severe judicial scrutiny because they apparently went overboard the CRC as well as the existing statutes for protection of child rights against sexual exploitation. The first one was related to groping of a minor by an adult where the defense was successful in establishing the fact that the accused did not touch the breast of the minor victim directly. This made the concerned judge to acquit the accused from charges under POCSO Act on the ground that there were no violation of laws including the Protection of Children from Sexual offences Act, 2012 (POCSO) as there were no direct skin to skin touch. The court instead of applying provisions from POCSO Act (which if accepted, would have held the accused liable to undergo punishment for jail term for minimum three years to maximum five years and also fine under S.8 of the POCSO Act), applied S.354 of the Indian Penal Code(Punishment for assault using criminal force to woman with intent to outrage her modesty), which limits the term of punishment to minimum one year, thereby lowering the gravity of the offence when compared with POCSO Act. The second in line from the same judge was regarding showing a minor private parts of the adult, who allegedly held the former's her hands and apparently called her to be with him on bed.The prosecution defended its stand on considering the accused guilty in the light of Ss. 8 ((punishment for non-penetrative sexual assault), 10 (punishment for non-penetrative aggravated sexual assault) and 12 (punishment for sexual harassment) of the POCSO Act. But the concerned judge considered the offences under S.354 A of the Indian Penal Code (Sexual harassment and punishment for the same) and lowered the criminal liability of the accused.

While many child right activists had raised alarm on such kinds of interpretation of statutes and restriction of the application of POCSO Act which was enacted with the main objective to protect children from sexual offences and speedy delivery of justice to the victims, we must also see how these judgements had created a bad precedent for all especially in relation to execution of CRC principles. Unfortunately POCSO Act like many other criminal laws had been used maliciously earlier to defame several innocent persons by adults. But POCSO does not make children liable

for false claims of victimization under S.22(2). This is made on the assumption that children won't lie for such incidences unless they are specifically mentored to tell about another person's criminal intent and make him fall in legal tangles. But this does not mean that testimony of the children and reports made by the children would be washed away. POCSO Act has provided clear guidance as how the reports about sexual offences targeting children should be made under Chapter V. A brief overview of the chapter would show that the provisions adhere to the concept of best interest of children (Article 3 of the CRC) and right to life and survival (Art 6 of CRC). Again, a brief overview of the second chapter of POCSO which discusses about the categories of offences against the child would also show that the statute has acknowledged the criminal activities which may not be penetrative but which may create permanent or long term impact on the physical and mental health of the child. These include physical activities like molestation and assault as well as behavior which will make the child apprehend about danger. Nonetheless, the statute has addressed several victimological aspects as well if we see it in the light of the UN Declaration on Basic Principles of Justice to the Victims, 1985. As such limiting the application of POCSO Act in cases of child sexual offences would definitely encourage steep growth of the crimes against children as perpetrators would be knowing that it may be bailable and even if prison sentences may be awarded, it won't be as strict as under POCSO Act. Understanding this, the Supreme Court had taken note of the entire justice delivery process in all such cases especially with regard to Skin to Skin contact case and stayed the order the Nagpur Bench. Further, the stakeholders are also considering the eligibility of the said judge as she had failed to exercise the duties adhering to the universal principles of child rights as stated in the CRC.

Judges may apply their discretionary power in judging the cases: but that should never go against the well settled principles of human rights including child rights. They should neither be carried away by public sentiments especially when the case is related to protection of child rights. A balance must be maintained between the victim's rights and the rights of the accused regarding fair hearing and principles of natural justice. It is expected that the judiciary would restrain from committing such mistakes of bypassing universal principles and would make excellent precedents to create example for the society as a whole.

Growth of Women Entrepreneurs

Shrut S. Brahmbhatt, Assistant Professor of Law, UWSL

Indian culture considered women to be the home maker, taking responsibilities of the house hold chores, family members, social relations etc. However, these were not the only functions which women were expected to perform, women were always appreciated to stand along with men and function equally for the growth of the home and family members which is reflective from the title of 'Ardhaangini' bestowed on them. At times women were considered to be more burdened than their counter parts as they worked not only at home but even outside. Women had enjoyed the status of Karta also by virtue of being senior most member of the family in the absence of the the male head of the family; this is recognized in the revenue laws also. While holding such prominent positions, women had the occasion of running the family business and many times their innovative skills had resulted in the expansion of the family property.

Gradually, woman members of the family have become entitled to equal rights over the family property. Daughters were considered entitled to hold interest in the Hindu Joint Family property vide 2006 amendment of the Hindu Succession Act 1956. The position of women in other religion has also improved. Muslim personnel laws did not consider daughters to be different than sons, they possessed equal rights of inheritance. So are Christians and Parsi communities residing in India, daughters possess equal rights in the family property under their personal laws. This gave opportunity to women to nurture family property and business and expand the same with their own techniques. By 20th century, the skillful women members had developed and taken over many businesses in their hands. These ventures are mostly existing in the form of Gruh Udhyog (Business from home), providing several food and household related products. Future generations and particularly female members learnt many things from their mothers, aunties, and known women members. Resultantly, today many women entrepreneurs can be observed in the society. This is a positive sign for our nation which is developing with equal contribution of both genders.

Misjoinder of Defendants and Causes Of Action – Multifariousness

Dr. Ramniwas Sharma, Associate Professor, UWSL

Misjoinder of Defendants and Causes of Action

In a suit where there are 2 more defendants and two or more causes of action, the suit will be bad for misjoinder of defendants and causes of action, if different causes of action are joined against different defendants separately. Such a misjoinder is technically called mutlifariousness. Order 2 Rule 7 of Civil Procedure Code provides that objections must be taken at the earliest possible opportunity AND in all cases where issues are settled, AT or BEFORE such settlement, unless, of course, the ground for objection has arisen subsequently. If such objection is not so taken, it will be deemed to have been waived. The Allahabad High Court has held that if such an objection is taken up in the written statement of the Defendant, but it is not pressed, it cannot be taken again at a later stage. (Mst. Ulfat V. Zubaida Khatoon A.I.R. 1955 All 361). In this connection, it is also relevant to note the provisions of S. 99 of the Code which lays down that no decree can be reversed or varied on account of any misjoinder of causes of action not affecting the merits of the case or the jurisdiction of the Court. Under the present Code, the Court can direct the Plaintiff to elect which Defendants it will proceed against, and then allow all consequential amendments to be made in the plaint within a time prescribed by the Court.

Nonjoinder of Parties

At the outset it is said that where a person who is a necessary party to suit is not joined as a party to the suit, the case is one of non-joinder. A suit should not be dismissed on the ground of non-joinder. The objection on this ground should be taken before the first hearing (O.1, r.13) and the plaint may be amended by addition of the omitted party, either as Plaintiff or as Defendant, bearing in mind that no person can be added as a plaintiff without his consent though she may be added as defendant without such consent. In fact, the plaint may be amended for want of proper parties to the suit. Rule 13 provides that all objections as to non-joinder or misjoinder of parties must be taken at the earliest possible opportunity, and before the settlement of issues, and any such objection not so taken is to be deemed to have been waived. When such an objection is taken, and the Court upholds it, the suit is not to be dismissed by reason of such misjoinder or non-joinder of parties (Rule 9) rather, the Court may, in such suits, deal with the matter in controversy as regards the right and interests of the parties actually before it. The only exception to this rule is non-joinder of a necessary party. Necessary party means a party without whom no decree can be passed at all. It means that the necessary parties are required to be added in the plaint. Proper party is a party whose presence enables the court to adjudicate the matter more effectively and completely. Under Order 1 Rule 10 (2), the court may order that a person be added to a suit (whether as P or D) in the following 2 cases –

a) when he ought to have joined and is not so joined (necessary party)

b) when, his presence before the court would enable the court to effectually and completely adjudicate upon and settle ALL the questions involved in a suit (proper party)

Misjoinder of Plaintiffs and Causes of Action – A misjoinder of causes of action may be coupled with misjoinder of plaintiffs, or defendants. There may be a misjoinder of claims founded on several causes of action. In a suit, where there are two or more plaintiffs, and two or more causes of action, the plaintiffs should be jointly interested in all the causes of action. It is difficult situation in the plaint when there are multiple causes of actions in one suit. It may be as a mixed question of law and facts. Courts may find difficulties to try and dispose the suits. Hence it is pertinent to note that where there are two or more plaintiffs, and two or more causes of action, the plaintiffs should be jointly interested in all the causes of action. If that is not so, the suit will be bad on the ground of misjoinder of plaintiffs and causes of action.

The Situation of Women: Need of Equality in Home & Workplace

Dr. Sanjay Kumar Pandey, Associate Professor, UWSL

Women are used to perform numerous roles untiringly and selflessly in their daily lives, but they continue to face the violence and discrimination around the world. They face violence at different levels including physical, sexual, emotional and psychological irrespective of their family background and age group. In the face of Covid-19, the pace of violence and humiliation has increased at an unprecedented level. Women have been facing inequality in homes and also at workplace. The present century women have successfully scaled down the heights of every sectors in public life and defeated all the hurdles in their paths. However, the sexual harassment and violence at workplace and in home has taken a new leap simultaneously. During the pandemic, 'work from home' became the new norm and reality during which cyber workplace harassment against women have also been reported. The National Commission for Women reviewed the Constitutional provisions and statutory laws affecting women and thereafter suggested for remedial legislative measures to meet these new challenges. The Commission reviewed the Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act,2013 and observed that the direction regarding constitution of an Internal Complaints Committee is not complied by many. It also observed that that the definition of sexual harassment at workplace needs to be expanded to include gender-based cybercrimes. It is relevant to mention here that the mindset of enforcement machinery particularly Police needs to change. If any woman is ready to take initiative against harassment and comes to the police station then she must not be asked uncomfortable questions as she feels violated all over again. Police should launch specific programs in their area to make women aware about their legal rights and protection. The judiciary and the Bar Councils should also launch such programs to make women aware about various rights under different laws as well as sensitize people generally. Not only this, the younger generation, specially the students, should visit the rural areas and spread such information. Men should be held accountable for their actions which may violate the rights of women. And the last but not the least, it is the collective responsibility of our society to ensure equality for women and respect their right to a dignified life.

Policy Interventions for Inclusive Higher Education

Dr. Ayaz Ahmad, Associate Professor, UWSL

Noble constitutional goals of social justice and equality are part of the larger constitutional vision, and would most certainly qualify as legitimate competing interests in the field of higher education. Accordingly, there are certain compelling interests that the State can legitimately protect in the realm of private higher education. The Universal Declaration of Human Rights (UDHR), to which India is a signatory, under Article 26 provides that higher education shall be made equally accessible to all on the basis of merit. As well established by now, constitutional and other legal provisions should, as far as possible, be interpreted in a manner that best facilitates the attainment of international obligations and goals. When Articles 19 (1) (g) and 19 (6) are interpreted in the light of India's constitutional vision as well as international obligations such as UDHR, it becomes clear that the State has a compelling interest in ensuring that meritorious students belonging to socially & educationally backward class are not denied admission to higher educational institutions due to financial constraints or other considerations. As a necessary corollary to this, it is legitimate State interest that higher educational institutions follow the principle of representation while admitting students. It is also a legitimate State interest that poverty born out of social disabilities does not stand in the way of meritorious students who are desirous of pursuing higher education. Since the quality of higher education is important in shaping the future of the nation, the State also has a legitimate interest in ensuring excellence in higher educational institutions, whether they are of a private or public character.

Once the utility of private higher education is accepted on the touch stone of expansion and excellence, the problem of high cost of private higher education is relatively easier to resolve. The problem of increasing cost of private higher education can be tackled what can be termed as a "Common Scholarship Scheme". Under this scheme all students from socially and educationally backward classes falling below a certain income criteria must get government scholarship. This scheme would weed out undesirable subsidy to students coming from affluent backgrounds while fulfilling the aspirations of meritorious students from financially weak background. Creative policy interventions to make the higher education space truly inclusive is getting urgent by each passing day.

Farmers Protest In India

Dr. Amit Bhaskar, Assistant Professor, UWSL

The farmer protest is going on for the last few months in Delhi against the three Farm laws which were passed by the Indian Parliament in the Monsoon session last year. These controversial farm laws are The Farmers' Produce Trade And Commerce (Promotion And Facilitation) Act, The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, and The Essential Commodities (Amendment) Act. The main concern of the farmers is that the new farm laws will eventually lead to the abolition of Agricultural Producing Marketing Committee (APMC) which is the backbone of India's agricultural produce marketing infrastructure. The farmers are also apprehensive that provisions of the new farm laws will disturb the Minimum Support Price (MSP) for the agricultural products. However, the government is trying to allay the apprehension of the farmers by continuously giving assurance to the farming community that neither Agricultural Producing Marketing Committee (APMC) nor Minimum Support Price (MSP) will be abolished.

The demand of the farmers and farmers' associations is to repeal all the three new farm laws. The government is not in favour of repealing the law. However, the government is ready to amend the law to accommodate the concerns of the farmers. The situation has led to a stalemate. The latest development on the issue is that the matter has gone to the Supreme Court. The Supreme Court has made observation that it would be prudent to set up a Committee to deal with the stalemate as the current protest is leading to blockade of Delhi from all the sides by the protesting farmers. Under these circumstances, it depends upon the wisdom of the Government to resolve the issue and break the stalemate. One difficulty which the government is facing is that more than forty farmer associations are agitating against the Bill and there is no uniformity in their demands. Some are comfortable with amendment of the law while some want all three laws to be repealed. It is going to be difficult task for the Government to resolve these issues.

Missing Rcep: Good Or Bad For India

Nityanand Jha, Assistant Professor, UWSL, KU

"To be, or not to be, – that is the question: – Whether it is nobler in the mind to suffer the slings and arrows of outrageous fortune, or to take arms against a sea of troubles, and by opposing end them?"

Hamlet by William Shakespeare

15 Asia Pacific Nations signed the Regional Comprehensive Economic Partnership (RCEP), World's biggest trade agreement in November 2020. Exactly a year ago Narendra Modi surprised the RCEP negotiating members by opting out of the deal. Recent border conflicts with China has been one of the prime reasons of India opting out of the deal. The question that might be going through the minds of most Indians would be this:

Will it be good for India to opt out of the deal especially with India consciously trying to increase their share in Global supply chains?

Or

Will it good for India as the past experience of Free Trade Agreements (FTA) have been that Trade deficits have increased post signing the FTAs?

It is difficult to know the correct answer at this stage and only time will help us find out the outcome. Although it has been argued that FTAs have been signed with several Asia Pacific Nations, and not signing the deal will have minimal implications for India. In addition, India will also look to increase FTAs with US and European countries to compensate for the loss of opportunity in RCEP. Irrespective of the outcome, one important aspect for Indian companies would be to improve their competitiveness. Unless they are competitive globally, we will never be able to increase our exports. In order to increase competitiveness, Government and businesses will have to encourage Innovation and increase Research & Development expenditure.

Karnavati University
907/A, Uvarsad,
Dist.Gandhinagar- 382422

Tel: 079 3053 5083, 3053 5084
www.karnavatiuniversity.edu.in/uwsl