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:: Dignitaries Message ::

Dr. Fr. Lijo Thomas (Dean & Director)

Dear Students,

It gives me immense pride and joy to congratulate each of you on this remarkable achievement of transforming your CIA research papers into published book chapters. This achievement reflects your steadfast devotion, intellectual rigour, and commitment to excellence in legal studies. The transition from classroom tasks to making contributions to the legal corpus is a significant challenge. Your capacity to analyse intricate legal matters, use critical thinking, and express your ideas with precision and profundity is very commendable. Publishing your work has enhanced your academic reputation and motivated your classmates to aspire to greater heights and expand their capabilities. This achievement would not have been attainable without the help of our faculty members, whose mentoring has been important in moulding your academic pursuits. Your achievement reflects the values we hold dear at Christ University—a commitment to academic excellence, innovation, and a passion for contributing meaningfully to society. May this be the first milestone in your path as future leaders and innovators in the legal Industry.Congratulations once again! We are very proud of you.

:: Message ::

Fr. Justin P Varghese (Academic Co-ordinator)

Dear Students,

It fills me with immense joy and pride to celebrate your outstanding achievement of transforming your CIA research papers into published book chapters. This is a testament to your unwavering dedication, intellectual depth, and pursuit of academic excellence in legal studies. The journey from classroom research to published contributions in the legal field is no small feat. Your ability to critically engage with complex legal issues, articulate your insights with clarity, and add meaningful perspectives to scholarly discourse is truly commendable. This accomplishment not only strengthens your academic credentials but also serves as an inspiration for your peers to strive for greater heights. This success would not have been possible without the steadfast guidance and encouragement of our esteemed faculty members, who have played a pivotal role in shaping your academic endeavors. At Christ University, we take great pride in fostering a culture of academic excellence, innovation, and societal impact. Your success today marks the beginning of a promising journey toward becoming thought leaders and change-makers in the legal profession. Congratulations once again! We are incredibly proud of you. Wishing you continued success in all your future endeavors.

:: Message ::

Dr. Anto Sebastian

Dear students,

I'd like to take the opportunity to extend my warmest congratulations to everyone of you on your hard work and devotion to completing your research papers for your Legal Research Methodology course. It is wonderful that your efforts have resulted in the compilation of book chapters. This accomplishment not only indicates your knowledge of legal research concepts, but also your capacity to give significant insights to the subject of law. I encourage you to maintain this attitude of inquiry and intellectual conversation as you proceed through your courses. Your devotion to expanding your knowledge and abilities will surely benefit you in your future endeavours. Congratulations again on this major achievement. I'm looking forward to seeing more of your inventive work in the future.

Editor's

Dr. Sanjay Bang

Dr. Sanjay Bang brings over 19 years of extensive experience in legal academia and practice. He is currently an Associate Professor of Law at Christ University, Pune Lavasa Campus, and a visiting faculty member at the prestigious Indian Institute of Management (IIM) Raipur.Dr. Bang began his professional journey as a practicing advocate, spending two years in the legal field before transitioning to academia. Over the years, he has held significant teaching roles, including two years at the Lal Bahadur Shastri National Academy of Administration, where he instructed IAS, IPS, and IFS officers, and three years at the Kundal Forest Academy of Administration, educating forest officers in Sangli.A Master Trainer certified by the Department of Personnel and Training (DoPT), Delhi, Dr. Bang specializes in the Right to Information Act and the Right to Service Act. His academic versatility is underscored by clearing the National Eligibility Test (NET) in three disciplines: Law, Criminology, and Human Rights.

Dr. Bang is a prolific scholar with an impressive portfolio of publications. His research includes, 4 Scopus indexed papers, 2 Web of Science paper, 13 UGC CARE-listed articles along with **54 total publications**, spanning ISBN-accredited and peer-reviewed journals. He has also authored two books, contributing significantly to legal scholarship. He

actively collaborated on international academic initiatives, including his appointment as a Co-Teacher for "AI and Law" at Zetech University, Kenya. He has also delivered 38 invited lectures which includes Administrative Institute such as Maharashtra Police Centre and Gdansk University, Poland. He has delivered 250 lectures on Right to Information Act-2005 and Maharashtra Right to service Act-2015 for Government servants of Maharashtra, including Forest Department, Mantralaya, Police Department and Revenue Department His contributions in legal fraternity aim to bridge the gap between legal theory and practical implementations.

Asst. Prof. Priya Mondal

Priya Mondal is a dedicated academician and researcher in the field of law, currently pursuing a Ph.D. from Ajeenkya D.Y. Patil University. She holds her master degree in International Law from DES Shri. Navalmal Firodia Law College and an LL.B. from Balaji Law College, Pune. With over five years of experience as an Assistant Professor, she has taught a wide array of subjects including Public International Law, Penology, Jurisprudence, Labour Law, Research Methodology and Legal Constitutional History at both undergraduate and postgraduate levels.

Her research interests span across human rights, criminal sociology, and the application of AI in international humanitarian law. Priya has presented and published numerous research papers in national and international conference and journals, She has research articles published in Scopus indexed journals. She also holds UGC, HRD approved certifications in areas like Gender Sensitization and Research Methodology. Her work extends beyond academia; she was appointed as Faculty Co-ordinator for research study titled “Status of Justice Delivery system for children in conflict with law in Maharashtra,2019” for resource cell Juvenile Justice, field action project of TISS (Tata Institute of Social Sciences), which worked on the issue of Child Rights and Juvenile Justice, Mumbai. She has also worked as Research assistant in research project titled as “Critically Analysis of the Problems faced by Women police in Pune with special Reference to the

rank of ASI and Below" conducted by Savitribai Phule Pune University,2018.

She has been appointed as a Program Coordinator for ICUN Certificate course for Forest and Farm Action Global Programs 2023-2024, added value course for NAAC, BCI, NIRF by IARF for Chirst (Deemed to be University), Pune Lavasa Campus, and has also been awarded with gold medal for the same.

Her passion for legal education, combined with her leadership in coordinating moot court competitions and international workshops, underscores her commitment to fostering the next generation of legal professionals.

Asst. Prof. Akanksha Srivastava

Akanksha Srivastava is a dedicated legal scholar, educator, and researcher with over five years of academic experience. Currently serving as an Assistant Professor at Christ (Deemed to be University), Lavasa, Pune, she has previously worked at Balaji Law College, Pune University. She is currently pursuing a Ph.D. at Ajeenkya D.Y. Patil University, specializing in criminal law, victimology, and constitutional law. With a strong academic foundation, she holds an LLM in Criminal Law from SPPU, an LLB from Pune University, and a B.Com (Hons.) from Delhi University.She has published extensively in Scopus, UGC Care-listed, and national journals, with her work covering topics such as victim rights and compensation in India, gender justice, hate crimes against lesbians, insolvency and arbitration laws, and legal aspects of organ transplantation. She has actively contributed to academia by taking on leadership roles such as NSS Officer, Moot Court Cell In-Charge, Legal Aid Clinic Head. she has been a Panel Judge in Lok Adalat at Shivajinagar Court, Pune. Driven by a passion for law, justice, and academic excellence, Akanksha strives to contribute meaningfully to the evolution of legal education and policymaking in India.

Asst. Prof. Stuti Sowmya

Stuti Sowmya is a dedicated legal academician and researcher with a strong background in Intellectual Property Rights, Labour law, Gender diversity and legal education. She is currently working as an Assistant Professor at the School of Law, Christ University, Lavasa, Pune. Additionally, she is pursuing her Ph.D. at G.D. Goenka University, Gurugram, focusing on advancing legal scholarship through her research. She has also worked as a Teaching and Research Associate (Law) at Gujarat National Law University (GNLU), she has contributed significantly to legal research and academic coordination. At GNLU, she was actively involved in organizing national and international conferences, expert talks, and panel discussions under the DPIIT IPR Chair, Centre for Corporate and Insolvency Law, and the Center for Law and Economics. Her professional experience extends to working with renowned law firms like Nair & Associates, Pune, where she gained practical exposure in trademark prosecution, copyright filings, legal drafting, and intellectual property litigation. Additionally, she has interned with various law firms and NGOs, contributing to research on public interest litigation, disparities in legal education funding, and women and child welfare. An accomplished researcher, she has published a Scopus paper on "Relationship Between GM Foods, IPR, and Food Security in India" . Her interdisciplinary approach, combined with her passion for teaching and research, makes her a valuable contributor to the field of law and legal education.

Index

Analysis on the execution of wills under Indian Succession act, 1925. What are the limitations faced in probate proceedings?

Abhimanyu Kiron

Abstract

This paper focuses on the limitations faced by the heirs of a testator/testatrix in the execution of a will and the hurdles they face during probate proceedings where the Testator/Testatrix's estate is being administered as directed in their will and emphasizes the importance of probate proceedings as it helps in:

- Validating the will
- Granting Legal authority
- Transferring Assets
- Accounting for Assets

With the essence of Probate Proceedings now being highlighted, we further to address the element of this research paper which would be to identify issues and limitations faced by parties in probate proceedings and how it influences the execution of wills. The paper initially begins with elaborating the history and evolution of wills, highlighting its legal framework which includes the roles and functions of an executor which is detrimental in the process of executing a will as the executor is the only individual to know on beforehand the particulars included in the will by the Testator/Testatrix.

It further moves on to analyze the shortcomings in the Probate proceedings if any have been identified and lists certain recommendations and implementations which in turn would ease the work of the probate court and help the individuals party to probate proceedings. It also recognizes suspicious circumstances and identifies remedies to eliminate the said circumstances in order for there to be a smooth flow of proceedings in the probate court and the execution of a will. Finally, the paper emphasizes on the way forward in wills and helps provide a better understanding on the overall hurdles one has to face during these proceedings.

Introduction

The **ISA, 1925**[1] is a detrimental part of India's legislation pivotal to the distribution and inheritance of a deceased person's estate. It provides a framework for the legal recognition of wills and the fulfilling the wishes of the deceased. While the Act facilitates the process of succession for non-Hindu, non-Muslim communities, it also has provisions applicable to specific sections like Christians, Parsis, and Jews. The core mechanisms under the Act for the allotment of property of deceased is the execution of a will, which allows individuals to decide how their assets will be managed and inherited after their death. To make sure the authenticity and validity of such a will, the Act mandates that a will must be executed on par with certain formalities, including the presence of at least two witnesses at the time of signing.

Legal Framework

The Indian law relating to Wills is mainly contained in the ISA, 1925[2] which lays down detailed rules and Regulations concerning the making, Execution and Probate of Wills. As defined in Section 2(h)[3] of the Act, it is a statement of the desire of the testator, as to the disposition the testator wishes to make of his property after his death. The Act extends over every citizen of India but is not applicable on Muslims as they have a distinct law related to wills and succession. The testator must make the will when being in a sound state of mind contrary to section 59[4] of the Act. The testator must also make the will knowingly, and not by any fraudulent means including coercion and undue force. In addition, the will must be made by the testator/testatrix and must have two witnesses and signed by the other person as provided under Section 63[5] of the Act.

The executor that is named in the will he or she is the one who is supposed to implement the testator's wish and overseeing of the estate. In the event no executor is appointed by the deceased then the court will appoint an administrator to do the following duties. In this case, the executor or administrator has to get a probate, which is a legal signifying of the will's authenticity, from the relevant court. Probate is compulsory like when the will is conjointly regarding the movable and immovable property in Mumbai, Chennai or Kolkata cities.

Another legal provision of succession in regard to property among the persons governed by the Hindus law is the Hindu Succession Act, 1956. Thus, if there will have been a valid will then the rules of the act will prevail. Muslims, on the other hand, are subject to their personal laws under which a qualified Muslim can bequeath only one-third of his property by a will, as to the rest part, they are disposed according to share of Islamic laws of inheritance[6]. It also covers issues to do with challenges and controversies arising from wills. A will can be challenged, based on evidential grounds such as incompetency, exploitation, deceit or irregular signing of the will.[7]

Probate Proceedings

A probate court is a court that is specialized, or a court which through its jurisdiction is empowered to address issues to do with probate of the wills, the management of estates and the distribution of the property of a deceased individual. By the Indian Succession Act, 1925, the probate court also has the major responsibility of seeing to it that the intention or desire of the deceased, in this case as expressed in the will, is met in law. The role of a probate court, in this will, is to foresee the will and confirm that the testator's/testatrix/s Estate was distributed and administered in accordance with the laws on succession and inheritance in the Indian succession act. These legal proceedings are normally completed before a District Court or High Court, the court which has jurisdiction over such matters is that of the area in which the deceased was resident or owned property.

Functions of a Probate court

- Granting Probate of a Will: The main work of a probate court is to grant probate to a will. Probate like arbitrage is the court process of recognising the document as the legal will of the deceased thus enabling the legal representative to administer the property in compliance with the document. The court also checks on the legal requirements for a will.
- Validating the Will: It is for this reason that the probate court has the biggest task of deciding whether the will is valid. A will to be valid under the Indian Succession Act, must satisfy certain conditions that are, the testator's free and voluntary manner when drafting the will, the testator should be of sound mind, it should have two witnesses who are not beneficiaries under the

will. The probate court is to analyse these aspects to the letter to verify the validity of the will and the wishes of the testator/testatrix.[8]

- Administration of Estates: The probate court also has a significant function of supervising the estate distribution if a human being if dies without a will . When there is no will that is provable, the court read a certificate of administration to the administrator who is supposed to manage the estate and distribute it according to the laws on instate succession. This process is similar to probate where it isinvoked only where there is no will to probate. The court stands appointed for the legal management of the estate and for the legal bounty of assets to lawful successors as per the legal succession laws.[9]

Limitations and challenges faced in probate proceedings

The **ISA,1925** is complemented by the probate court system which has a lot of purpose but has received several criticisms. Such risks are time and cost consuming especially when a dispute occurs about the will or the inheritance laws affecting large or cross border estates. Further, people understand little about the legal requirements in drafting a valid will which is why probates cases result in delays and dispute. Courts must go through these challenges at the same time, so that the estate can be distributed in the manner that is expected by the deceased will as well as the law. The probate court plays a crucial role in the orderly administration of the properties of the deceased in cases both where the person left behind a will and where he/she died intestate. The processes of granting of probate, determination of controversies, and supervision of estates as administered by the court should protect the death's family and creditors and; most importantly ensure justice and fairness in succession. To put in easier language:

Different states in India have different rules. It's like playing a board game where the rules change depending on which city you're in. Some religious communities don't need probate in certain states, while others do. This patchwork of rules can leave families scratching their heads, wondering what applies to them. The process is also vulnerable to challenges. Anyone who feels the will isn't right can contest it - maybe they think the person wasn't thinking clearly when they wrote it, or someone pressured them into making certain decisions. When this happens, it's like opening Pandora's box -

everything gets more complicated, takes longer, and costs more. The person managing the will (the executor) has to prove everything is legitimate, which can be quite stressful. Lastly, perhaps the most human aspect of all this is that while courts can validate a piece of paper, they can't mend broken relationships. Family disputes over inheritance can leave deep emotional scars that last long after the legal process is over. It's like having a referee who can declare a winner but can't make the players shake hands and make up afterward. In essence, while probate is designed to protect everyone's interests, it often turns into a challenging journey that tests families' patience, finances, and relationships. It's a reminder that sometimes the systems we create to solve problems can create new challenges of their own which is why we need certain remedies which can help combat these problems.

Validating a will

Wills as provided under section 2(h)[10] of the **ISA, 1925** means the legal declaration of the intent of testator in relation to the property which he desires to be acted upon after his death. Will is a very basic legal tool which does not have to be drafted by a legal practioner and does not even require the use of legal jargon and call for an A4 sized paper. It should be noted here that law doesn't require a will to be registered or stamped. The general/major requirements of a valid will as per the act are:

- Only a person who is of sound mind and is not a minor can execute a will to dispose his/ her property. (Sec.59)[11]
- Execution of will should be a voluntary one and any execution influenced by fraud or coercion is void. (Sec.61)[12]
- The Testator/ Testatrix must sign or affix his/ her mark to the Will (Sec.63 (a))[13]
- The said signature shall be placed in such way that it appears that its intention was to give effected to the writing of the will. (Sec.63 (b))[14]
- The Will should have two attesting witnesses. (Sec.63 (c))[15]

Removing of Suspicious circumstances in the execution of a will

However, the relevant question is when a will challenged in then the Testator / Testatrix cannot come to defend the will as they are deceased and to eliminate all the suspicious circumstances prevailing in respect of the will in question.

The Hon'ble Supreme Court of India, one year back on 19.05.2020, in the judgment of Kavita Kanwar Vs Mrs Pamela Mehta & Ors[16] has dealt with the question of other circumstances which may cause the will to be rejected as a forged will.

Kavita Kanwar Vs Brief facts : Mrs Pamela Mehta & Ors:

The case involved the will of one Mrs Amarjeet Mamik, the testatrix in a court. The testatrix was having two daughters and a son. One of the daughter's was the executrix appointed in the will of the testatrix. The executrix does live with the testatrix nor had cared for her for more than 2 decades and yet she was the major beneficiary of the will. The other daughter whom was a widow also resided with her mother as well as took care of the testatrix who was sick. All the other children except the executrix who both said they had good relationship with the testatrix failed to benefit from any material object under the will. The executrix subsequently presented an application for grant of probate for the said will. This said petition was dismissed by the trial court. The said order of dismissal was upheld by Hon'ble Delhi High Court. The executrix had challenged the said Order of the Hon'ble Delhi High Court with the Hon'ble Supreme Court of India. The Hon'ble Supreme Court vide its said Order dated 19 May 2020 dismissed the appeal on the suspicion surrounding the said will, which can broadly be classified in the following 3 circumstances which includes the beneficiary in the performance of the will. Specifically, it will be remembered that other children were disinherited while the latter was actively engaged in the administration of the bequest. The other children were left out of the will with no explanation given as to why the executrix was a major beneficiary. This gave suspicion according to the extent of the active participation of the executrix in compelling her mother to sign the will.[17] Of course, failure to include other children and leaving all or the largest share of the properties to only one child would not make the will invalid. This proposition has many earlier precedents to back it. The Hon'ble Supreme Court in the case of Ramabai Padmakar Patil (D) through LRs. & Others Versus Rukminibai Vishnu Vekhande & Others[18] (2003 (8) SCC 537) held that

"...A will is executed to alter the ordinary mode of succession and by the very nature of things it is bound to result in either reducing or depriving the share of natural heir. If a person intends his

property to pass to his natural heirs, there is no necessity at all of executing a will. It is true that a propounder of the will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that the natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance especially in a case where the bequest has been made in favour of an off spring..."

From here, we can note that when no given reason had been recorded the other children were excluded out of the will where active involvement of the major beneficiary of the will is proved beyond doubt, there then exists a valid suspicion with respect to the voluntary execution of the will by the Testator.[19]

In the current scenario, a portion of the will was hand-written and the other part was typed where the portion which was hand-written had pencil lines below proving the fact that the testatrix had written it on someone else's instructions but the typed-out portion could not have been on the testatrix's instruction as she was not literate. The Hon'ble Supreme Court observed since a portion of the will contained both technical and legal terms it proved that the will would have been drafted by a lawyer which led to further suspicion that the testatrix, who is not a literate, may not have fully understood the contents present in the will. Furthermore, one of the attesting witnesses whom was deposed in the probate proceedings admitted to not knowing the testatrix in a person capacity and he was called by the executrix to the house of the testatrix to witness the will. The daughter of one of the attesting witnesses had received a sum of Rs. 25,000/- from the executrix. These statements from the attesting witnesses gave room for more suspicion that the execution of the said will was not a voluntary one and it is coerced by the executrix.
Based on the above suspicions the Hon'ble Supreme Court invalidated the will.

Way forward on the Execution of Wills and Recommendations

Testators/ testatrix should fulfil the mandate of The Indian Succession Act, 1925 as mentioned in the general requirements of the will;

Testators/ testatrix should have good and credible attesting witnesses who can recognize the Testator/ Testatrix. Any suspicion concerning the will shall be put to test by determining the

relationship between the major beneficiary and witness, also deeming it so that great care must be taken while selecting the witness. It is ideal for said witness to be considerably younger than the testator/testatrix and said witness must be recognizable when the will is presented. The will must be in clear, understandable language where if any professional's assistance has been taken, the details of said person must be included in the will. Though registration of will is not mandated under law, it is safer to register a will as it gives a positive presumption, though rebuttable, yet still helps in proving the validity of a will where in the case of Palani Ammal & Others Vs Pappathi & Others[20] , where the Hon'ble Madras High Court held:

"a registered document is having additional evidentiary value, as it attracts the presumption of genuineness as contemplated under Illustration (e) to Section 114 of the Indian Evidence Act"[21]

The Testator will not be alive at the time the will is presented to a Probate Court for validation. Hence the Probate Court is determining a serious matter and it will approve a will if only its conscience is clear on the non-existence of any questionable factor in the making of the will. Therefore, proper care needs to be taken and about mentioned suggestions have to be considered while doing the will. This will guarantee that the intentions of the testator/ testatrix are achieved after the demise of the testator/ testatrix.

Conclusion

With the above measures listed, the paper hopes to reach its primary objective to remedy the limitations faced during probate proceedings by identify certain issues, helping nullify suspicious circumstances and providing suggestions to help smoothen the process of probate proceedings. With this, it is more than fair to say that if one were to follow and adhere to the measures recommended and the procedures given under the Indian Succession Act, 1925, it will definitely help in the smooth execution of a will. Furthermore, modern developments and digital factors have created certain complexities to the execution of a will. While it is very important to adhere to the core principles of the act, it also very important for judges to consider the contemporary scenarios like the one mentioned in the paper as these matters require careful, considerate and mindful adjudication. Lastly it is essential to respect formality and practical feasibility, but to always keep in mind that the ultimate goal is to honour the testator/testatrix's last wishes and protecting the

wishes and interests of all the stakeholders and beneficiaries involved.

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14. Section 63(b), Indian succession act,1925.
15. Section 63(c), Indian succession act,1925.
16. AIR 2020 SUPREME COURT 2614, AIRONLINE 2020 SC 544
17. AIR 2003 SUPREME COURT 3109, 2003 (8) SCC 537
18. 2013 (3) CTC 729
19. Section 114 of the Indian Evidence Act

Maritime Environmental Law and Sustainable Development in Today's World

Aby Mathew Ambooken
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Abstract

The seaborne operations have always been important throughout history contributing to the economical and social growth of many civilizations, representing the essence of the international and economical growth. Ships and harbours and the fishing industry interconnect countries and foster both trade and the sharing of ideas between countries.However, a growing intensity of maritime activities has, unfortunately, led to significant environmental degradation. Marine ecosystems and biodiversity are under severe threats through uncontrolled exploitation of marine resources, polluted shipping and industrial activities, and destruction of marine habitats.Against these challenges, this research investigates the developing role of maritime environmental law in that it finds a balance between the implications of economic and social interests.Harmful activities like oil spills, plastic pollution and overfishing have always been a threat to the marine environment.Nations are racing with the untamable eagerness to speed up global connectivity by maritime means. A short investigation is currently ongoing at the intersection of maritime law and environmental law across how these legal frameworks work together to counteract environmental harm while supporting sustainable economic practices.In line with proper positioning of maritime environmental law to ensure that goals and mandates cooperate in advancing the United Nations' SDG's,the paper is going to do specifically focus on the urgent level of global cooperation needed, legal reform, and a host of other innovative ideas for dealing with marine environmental challenges related to SDG 14.The study further went on to advance the growing economic and social

significance of maritime environmental law, advocating for policies which ensure the protection of marine ecosystems and promote the enhancement of sustainable development within the maritime sector.
KeyWords: Economic, Environmental, Maritime, SDG, Marine

Introduction

Other frameworks that exist in the international legal landscape are the United Nations Convention on Law of the Sea and the International Convention on Marine Pollution by Ships[1], an acronyed as MARPOL, put in place a skeleton framework of international marine environmental governance. These treaties offer important rules concerning maritime zones, rights in the territorial sea, exclusive economic zone, on the high seas various issues from polluting the sea to the protection of species. Area specific mechanisms and the national protocols amplify these undertakings given that they deal with specific issues within and across border regions. However, challenges still exist to a large extent in the realization and application of these legal frameworks. For example, many developing countries have constraint in financial and technical capital to implement the rule schemes in the context of the international standards. In addition, new risks including deep-sea mining, microplastic pollution and ocean acidification seem to put pressure on the flexibility of current legal instruments. Maritime law necessarily requires ongoing integration with other sustainability trends and the procedural cornerstones of ocean governance must be aligned with broader environmental, economic, and social objectives. This paper explores how the rules governing the marine environment and its use are linked to the concept of sustainable development and parses the history of this field, main strategies, and current issues it encounters. It provides a critical evaluation of the current legal instruments in responding to modern marine challenges and possible areas of improvement. In presenting SDG 14[2] and related goals as key transit points between maritime law and the main subject of this research, the author sought to provide policymakers, legal experts, and ocean enthusiasts with actionable advice to ensure that our oceans will remain prosperous and healthy far into the future.

Evolution Of Maritime Environmental Law

Johnston and VanderZwaag's (2000)[3] claimed a major overview of the evolution of international maritime law and its shift

from the early frameworks that promoted navigational access ad use of resources to the modern frameworks that are based on conservation and management. The authors also stress the shifts in key considerations; the features are important in the context of the rising focus on human impacts on the marine environment. However, authors express their concern that, as a result of the league's broad coverage, there are drawbacks associated with implementation and enforcement, including in areas outside national jurisdiction. In a similar similar manner, Okubo (2014)[4] analyses the emergence of safety and environmental laws surrounding the continental shelf exploration of oil and petroleum. He complains that existing frameworks do not adequately help to deal with new technologies and the conditions that are found at sea. This gap calls for constant review of laws intended to counter these threats and malpractices to ward off their misuse and achieve sustainability.

Contemporary Challenges In Marine Governance

Rayfuse, Jaeckel, and Klein (2020)[5] attempted to to the future for maritime environmental law understanding the position that questions such as Marine Biodiversity loss, Climate change, and Marine Genetic resources are all essential to address .s. International frameworks like UNCLOS they argue provide a sound starting point but are in many instances inadequate for solving emerging and complex issues such as ocean acidification as well as effects of deep-sea mining.Anderson (2024)[6] and Smith (2024)[7] elaborate these challenges further to address the relationship between maritime law and the United Nation Sustainable Development Goals (UN-SDGs). like biodiversity loss, climate Maritime Environmental Law and Sustainable Development in Today's Worldchange, and the regulation of marine genetic resources They do not deny the fact that UNCLOS type of structures provides broader and strong legal commentary; however, they are inadequate to address new and dynamic challenges like OA and effect of SMS. They describe these challenges further stating the correlation between maritime law and the United Nations Sustainable Development Goals (SDGs) as ocean acidification and the impacts of deep-sea mining. They tried to expand on these challenges, discussing the integration of maritime law with the United Nations Sustainable Development Goals (SDGs). Anderson discusses how law can achieve the sustainable development goal 14 for the conservation and sustainable use of the

oceans. However, he explains that in order to achieve such alignment, there is need to demonstrate a good policy coherence as well as coordination among different jurisdictions. Smith obtains a related perspective and highlights the part of the maritime law as a means to accomplish overall sustainable development goals of the United Nations, primarily the number thirteen– combating climate change and the number twelve– ensuring sustainable consumption and production patterns. Similarly, both authors emphasize the call for improving the enforcement mechanism to help fill that gap between policy and implementation.

Addressing Emerging Threats

As it stands new threats to the marine environment, for instances, microplastic pollution, deep sea mining, and climate change, have brought debates for amendment of existing laws.Okubo and Addis[8] claimed that these threats need new regulation and coordination among countries.rompted calls for updates to existing legal frameworks. They argue that these threats require innovative regulatory approaches and international cooperation. For instance, deep-sea mining as an economic opportunity is not without its perceived dangers to the environment hence should fall under extra precaution in UNCLOS provision. An example raised by Addis includes the ability of the international tribunal of the environment to determine and resolve issues of noncompliance, the author however, equally underlines some of the political as well as practical realities of creating the institution.

Technological Innovations And Enforcement

Another emerging research topic in the context of the maritime domain is the place of technology in governance.Liu[9] discusses how new capabilities in satellite, artificial intelligence and blockchain to improve enforcement of compliance with MEA. Blockchain technology can enhance enforcement and compliance with maritime environmental laws. For instance, satellite imagery has applied in identifying cases ofillegal fishing, and monitoring cases of pollutions, Blockchain on the other hand has helped in the tracking of the supply chain for sea foods. They have the ability to solve some of the largest enforcement-related issues that have plagued the market, especially in developing areas.

Success Stories And Lessons Learned

Case studies of successful implementation offer valuable insights into the potential of maritime environmental law. Rayfuse et al. (2020)[10] discuss the establishment of marine protected areas (MPAs) such as the Ross Sea MPA, which has become a model for balancing conservation and Maritime Environmental Law and Sustainable Development in Today's World sustainable use. Similarly, Anderson (2024) notes that they have also noted improved pollution control afterward despite disaster such as the Deepwater Horizon oil spill. These examples illustrate many questions about the role of law, engaging stakeholders, and learning to manage for sustainability.

Gaps And Opportunities

Nevertheless, reviewing the scholarly production of the field reveals the existence of critical voids aforementioned in the development of maritime environmental law. A majority of frameworks are weak in addressing new threats and there continues to be problems in enforcement. The environmental regulation's issues include restrictions based on financial and technical abilities: this is especially relevant for developing countries .According to Halvorssen (2011) and Smith (2024), there is an increased need to undertake capacity building, to increase funding, and to strengthen partnership efforts in order to address these gaps.threats, while enforcement remains a persistent challenge. Paradoxically, at the same time, there are potentialities for learning all around, the experiences which can become a solid basis for developing successful strategies, creating successful products, signing successful contracts, and achieving other expected goals.In respect of the themes identified from the literature, it is possible to include integration of MLPs with ecosystem-related management tools, improvements to regional cooperation, and making use of technologies to manage enforcement.s a persistent challenge. Developing countries, in particular, face barriers related to financial and technical capacity, limiting their ability to comply with international standards. Halvorssen (2011) and Smith (2024) stress the need for capacity-building initiatives, greater financial support, and increased collaboration to bridge these gaps. At the same time, opportunities for improvement abound. The literature points to the potential of integrating maritime law with ecosystem-based management approaches, enhancing regional cooperation, and

leveraging technology to strengthen enforcement. All these measures coupled with sustainability should lead into a fruition that maritime law should continue to effectively address challenges of the twenty first century as envisaged.

Maritime Environmental Law Frameworks

Maritime environment law is a network of international, regional and domestic legal tools designed to protect the marine environment and promote rational use of count's sea resources. These frameworks aim at solving many problems like pollution control, wildlife protection and sustainable utilization of sea products. This section looks at some of the major international instruments, regional activities, and the roles played by organisations in the application of MEEL.

International Frameworks

The United Nations Convention on the Law of the Sea (UNCLOS): UNCLOS is a widely recognized legal code and properly called as the 'constitution of the oceans'. Set up in 1982, this convention describes many maritime areas including territorial sea, exclusive economic zone, and superordinate sea area. It provides rich provisions on the use of the resources, protection of the environment and solving of the conflicts. To the same effect, it is worthy of mention that the environmental provisions of UNCLOS are quite exhaustive, and are specifically provided in Part XII, an adoption which required states to take measures for the protection and preservation of the marine environment. These obligations requires nations to prevent, minimize and control pollution arising from various on-shore activities, sea-bed exploration, and discharges from ships. Nevertheless, some critics contend that UNCLOS is deficient in enforcement mechanisms, especially in regions beyond national jurisdiction, where governance tends to be fragmented and enforcement practices are often inconsistent..The International Convention for the Prevention of Pollution from Ships[11] (MARPOL): MARPOL which was originally adopted in 1973 and has since been modified by protocols is a very important treaty relating to pollution of the maritime environment by ships. It addresses oil, chemical, sewage, and garbage pollution and emissions of air pollution from ships. Six annexes of MARPOL contain comprehensive information on technical specifications and performance parameters relating to reduction of pollution from

ships. Nonetheless, MARPOL experiences some implementation hindrances such as inadequate resources in measuring up to the requirements of developed countries particularly the developing countries. Such measures are based on compliance with the treaty on the part of the flag states and the inspection regimes in the port states; recent advancement in MARPOL includes new amendments to consider emission of greenhouse gases from ships for which appropriate measures have been provided in conformity with the international climate change framework.

The Role Of International Organizations

International Maritime Organization (IMO): The International Maritime Organization (IMO) was fundamental in the formulation and implementation of International conventions governing maritime safety, security and the protection of the environment. Apart from the MARPOL convention, the IMO has other forms like Ballast Water Management Convention[12] to reduce the spread of invasive species and Polar Code to regulate operation of ships in the polar regions. The recent attempts made by the IMO are focused on decreasing the emission of carbon in the shipping industry and the efforts entail mandatory measures to enhance energy efficiency and the use of fuel and energy that is different from or in addition to conventional marine fuel. However, they are often retarded by the differences in the interests of the member states – developed and developing ones.

The Intergovernmental Oceanographic Commission (IOC): The IOC of UNESCO concerns with marine scientific research and development of capacities for such research. Some of these include GOOS whose mission is to deliver appropriate data and tools to inform marine resources protection and management. Non-Governmental Organizations (NGOs): That is why there is a necessity of such organizations as WWF or Greenpeace to push for well-built legislation protection of environment and to control the deploy of governments. They also cooperate with other entities within the international community to build the guidelines and provide states with technical help.

Gaps And Challenges In Frameworks

Despite the progress made through these frameworks, significant gaps remain:

- Limited Enforcement: Statistics in many treaties are based upon self-assessment and there are no system of punishment

in case of non- compliance especially regarding issues outside the geographical jurisdiction of a country.

- Fragmentation: Treaties and organizations duplicate their activities and responsibilities hence they compete with each other. For such reasons, there may be confusion in the regulation of affairs by various international treaties such as UNCLOS, Convention on Biological Diversity[13], and regional agreements.
- Capacity Constraints: Due to inadequate technical or financial strength most of the developing nations are incapable of applying or enforcing maritime laws to enhance global advancement.

Opportunities For Improvement

To address these gaps, several opportunities exist:

- Strengthening Governance: Evaluating the potential of a legally binding treaty for BBNJ where could complement existing gaps in UNCLOS of high-seas protection of marine species.
- Enhancing Regional Cooperation: Financial support in regional frameworks can be improved, and members to share knowledge, by boosting the amounts provided for these programs.
- Leveraging Technology: Satellite application and Blockchain can aid in better enforcement of and increase transparency about marine laws.
- Fostering Collaboration: Strengthened cooperation of international organizations, states and NGOs can increase the consistency and efficiency of implementation of maritime environmental law and regulation.

Regional And National Frameworks

This enlarged segment outlines the structure and core features of maritime environmental law, as well as considering the key successes, difficulties, and opportunities for improvement for the discipline. UNCLOS is the legal framework governing ocean space and its subcategories including territorial seas and EEZs. It also includes management of resources in organizations together with the protection of the environment. However, these laws are prescriptive and their implementation is left to individual states, this leads to apparently.

Contemporary Perspectives in Maritime Environment and Sustainable Development MARPOL pertains to pollution by ships which includes; oily waste, harmful waste, and air pollution. Even though the operational acceptance implies global commitment, the developing nations often encounter difficulties in compliance stemming from the deficiency of resources.

Role Of Organizations

The IMO and other international bodies play a pivotal role in setting standards and promoting compliance. Recent IMO initiatives focus on reducing shipping emissions and promoting green technologies. However, progress is often slow due to competing economic interests among member states.

Linking Maritime Law To Sustainable Development

• Relevance to SDGs

Maritime environmental law has a strong relationship with the 14th SDG provided that works to designate and sustainably manage the use of oceans. It also aligns well with another goal for instance the goal number thirteen which focuses on climate action and the goal number twelve which is on responsible consumption and production.

• Policy Integration

Of special concern is the need to address interrelated problems such as marine pollution and loss of biological diversity through the application of approaches such as ecosystem based management. But this is not often the case because most laws operate in isolation which limits integrated responses.

Critical Challenges And Opportunities

Climate Change and Ocean Degradation

Global warming is characterized by increased sea temperatures, levels of acidity and rising seacoast, which are alarming to marinesystems. Contemporary legal systems leave many such multifaceted and cross-jurisdictional problems unaccounted for.

- **Emerging Issues**

Two relatively recent developments include deepsea mining which is not addressed in the current treaties, and pollution by microplastics. For example, UNCLOS contains general recommendations for such activities but does not include definite rules for them.

- **Technological Innovations**

Technological improvements of satellite imagery, AI, and blockchain provide solutions in the directions of enforcement and accountability. For instance, satellite can detect cases of unauthorized fishing while blockchain provides supply chain transparency in the seafood industry

Future Perspectives

To strengthen maritime environmental law in support of sustainable development, the following steps are recommended: Implementations: alter conventional treaties such as UNCLOS due to new threats such as deep sea mining and micro plastics. Enhancing Enforcement Mechanisms: As a result, governments should invest in capacity building and special attention should be paid to countries in development. Leveraging Technology: Use things like Artificial Intelligence and satellite in enforcing the laws and making the process more transparent. Maritime Environmental Law and Sustainable Development in Today's World Promoting Stakeholder Engagement: Using stakeholder management, people in various provinces and industries and NGOs should be encouraged to participate and follow marine conservation policies to the later. Further research for these questions should be aimed at assessing the effectiveness of legal initiatives and identifying applied approaches to new problems.

Conclusion

Maritime environmental law provides the basis for the global effort to protect the marine environment and encourage sustainable development. While instruments like UNCLOS and MARPOL create a very broad framework, there is an urgent need for these regulations to develop new mechanisms to address the modern problems, including climate change, deep-sea mining, pollution.

Thus, this paper especially focuses on the need to adopt a comprehensive policy measures, improve the mechanisms of law enforcement, and increase international cooperation. Surprisingly, through the implementation of appropriate technologies, whereby maritime law invites more participation an s from stakeholders, it can better foster endorsement of SDG 14 and other sustainability goals. To continue the progress, people, governments, global organizations and civil society must work as a team. It is possible for maritime environmental law to engender the perpetual prosperity of oceans and posterity, through synergy.

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Integrating Personal And Business Income Tax

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Abstract

This paper explores double taxation within corporate tax systems in the U.S and India, involving corporate income taxed twice-by first, at the time of corporations and then after distribution, when dividends pass on to the shareholders-in this manner, double taxes force companies towards debt financing versus equity to avoid taxes or minimize them. Capital was thus misallocated and firms were placed at increased financial distress through high leverage. The paper examines proposals for tax reforms that would seek to integrate corporate and personal taxes to eliminate those inefficiencies. The American Law Institute advocates for a full integration system in the United States. This would eliminate the bias towards debt financing since the corporate profits are taxed only once. This reform encourages equity financing, which helps maintain a balanced tax structure by providing the incentives for equity investment without any additional tax penalties. On the other hand, partial tax integration by India was thwarted by administrative complexities and revealed a strong need for streamlined reforms that reduce double taxation while being adaptable to local economic environments. International models are reviewed to highlight alternative approaches.

For example, in Sweden, the equity-neutral taxation system applies, wherein all sources of funding have the uniform rate of taxation; Germany, on the other hand, makes use of a split-rate system wherein retained and distributed earnings are taxed differently; therefore, equity financing is encouraged. These international examples narrate how debt bias may be reduced

through tailored tax policies. With the help of integration models, the United States and India can achieve an even more balanced, efficient, and equitable tax system without much reliance on debt financing and overall economic stability.

Key Words : Double Taxation, Corporate Tax Reform, Debt Financing, Tax Integration, Economic Efficiency.

Introduction

This relates to probably the most contentious issue of tax policy, particularly for systems where double taxation poses a significant financial obstacle. For instance, in the United States and India, earnings of corporations are taxed not only at the corporation level but also when the same are distributed to shareholders through dividends. Such a multi-layered tax platform increases the cost burden on shareholders but further influences corporate financial decisions. Thus, firms may prefer debt financing over equity financing to limit tax payments. This skewed use of debt boosts corporate leverage, thereby increasing potential financial risks and instability within the economy.

This paper investigates the economic distortions stemming from double taxation in the corporate tax regimes of the U.S. and India, analyzing inefficiencies and capital misallocations under the current policies. In response to these issues, officials and tax professionals from the U.S. and India have debated several tax reform proposals that seek to merge corporate and personal income taxes with the purpose of consolidating taxation and eliminating the debt-equity bias. A model of full integration floated by the American Law Institute in the United States would tax corporate profits just once and, thereby create a more balanced landscape of equity and debt financing. Partial integration reforms in India have, however faced considerable administrative challenges that have somewhat curtailed their effectiveness at redressing the structural inefficiencies of the current tax system.

Drawing lessons from the international models, Sweden's equity-neutral approach to tax integration and Germany's split-rate system for retained and distributed earnings, alternative approaches to tax integration based on the same principles in this paper will bring such implications into the limelight that will influence equity financing.

The comparative examples will allow the countries to craft policy with regard to tax by ensuring financial stability, as well as reducing biases within a more efficient capitalallocation mechanism. The models, by drawing insights into the arguments of this paper, have revealed that comprehensive tax reform initiatives will benefit the U.S. and India in the medium to long term, because it reduces the dependence on debt financing and builds up a more balanced, integrated tax system.[1]

3.1 The Importance of Tax Integration

Integrating personal and business income tax systems is an attempt at solving the ancient problem of double taxation. In conventional tax systems, corporate profits are taxed at the business level first and then taxed a second time as personal income through dividend payouts to shareholders. Such a doubling layer of taxation could discourage investment; can occasion inequality; and influence the corporate conduct. An integrated tax system would bring the taxation of business and individual incomes closer together so that there would be no distortion in the economy.[2] For example, dividends received by shareholders would be either exempted from further taxes or credited for taxes paid by the corporation in the integrated approach. This will bring about a harmonization of incentives for investment and economic growth.

3.2 Current Tax Systems and Challenges

A classical tax system in the United States has its taxes levied directly on a corporation's profits, while personal income taxes are levied on the dividends on the shares by the shareholders.[3] A pass-through method of entities, such as corporations and partnerships, eliminates double taxation on income for small and medium-sized businesses by passing the income directly to owners to pay personally. This is a cumbersome system and of value only to those businesses that fit this category.

On the other hand, India has traditionally used dividend distribution tax systems where companies pay tax on dividends at the source before distribution, creating a double burden along with personal income tax. Recent reforms that abolish DDT and revert to a classical system where shareholders pay tax indicate a shift toward aligning corporate and individual tax responsibilities. However, the lack of consolidation will continue to create inefficiencies in tax and even act as disincentives for investments.

3.3 Benefits of Integration Economic Efficiency:

Integrated tax systems eliminate tax distortions in organizational decisions by allowing capital that is better allocated, then corporations would not be given incentives to hold more earnings than those necessary and also avoid excessive debt.[4] This is because dividends and interest payments would be treated differently.

Equity and Fairness: Consolidation of tax policy reduces the opportunity for disparate tax treatment of business profits compared to personal earnings, and at least restricts the means by which high-income taxpayers can maintain a lower overall tax liability through use of corporate forms.

Administrative Simplicity: Simplification and reduction in opportunities for abuse will make compliance simpler and likely lessen the administrative costs imposed on and borne by the government and the taxpayer.

3.4 Challenges and Critiques Personal and Corporate income taxes integrated

Its challenges Implementation Complexity: Transitioning from a dual system to a combined one is essentially a legislative and administrative change[5]. There may be a natural resistance from the stakeholders, who have their interests in the current tax regimes when reform takes away the tax benefits accrued currently.

Revenue Impacts: The[6] reforms would initially result in revenue shortfalls for governments if the effective tax rate on corporate distributions goes down.

Equity Implications: Integration should not create the situation where the benefit accrues disproportionately to high-income people or large corporations. There will be a need for careful calibration of the tax rates and exemptions.

4.Research Methodology and Method

It outlines methods and approaches used to analyze integration of personal and business income tax systems, making use of case studies pertaining to the U.S. and India by drawing inferences from international practices. This methodology shall ensure an all-rounded comparative analysis of the tax policy frameworks, legislative reforms, and what their implications have been towards the economy.

4.1 Research Design

The comparative qualitative research study is designed by examining the prevailing corporate and personal tax systems in the U.S. and India. A case study methodology is used to analyze the legislations developed and their implications on the financial behavior of corporations, especially debt and equity financing. A multi-jurisdictional analysis using international models is also deployed, following Sweden and Germany.

The research methodology entailed both theoretical and practical approaches to give an unbiased assessment of the policy reforms that are geared towards eliminating inefficiencies of double taxation. The study, therefore, insists on its focus towards understanding how these reforms increase economic efficiency, equity, and simplicity in tax administration.

4.3 Methods Used

The research will use both qualitative analysis, comparative case studies, and legal-economic reasoning in the drawing of conclusions:

Comparative Analysis

The comparison between the U.S. and Indian tax regimes: on double taxation, equity debt financing, and administrative complexity.

Benchmarking international models- comparing with the Swedish and German countries on alternative approaches that have proven to be more effective Case Study Evaluation:

Analyze selected legislative reforms: for example, the U.S. Tax Cuts and Jobs Act of 2017 and India's DDT repeal for their consequences on corporate and individual taxation.

Examine pre and post reform corporate financial behavior including dividend policies and leverage ratios.

Legislative and Policy Analysis:

Analyze tax policy theoretical consistency: look at proposals such as full tax integration in the U.S. and partial reforms in India.
Identifying structural inefficiencies and gaps within current systems.

Economic Impact Assessment:

Reviewing the effect of tax integration models on economic efficiency, reduction of debt-equity bias and balanced allocation of capital.[7]

Theoretical Framework

Using principles of equity, neutrality, and efficiency to assess whether integrated tax systems are close or far from economic objectives.

4.4 Limitations

While the study boasts a robust analysis, the following should be taken into account:

Data Limitation: Availability of Consistent and Comparable Data Across Jurisdictions, Especially for Smaller Economies.

Scope of Analysis: The limitation to the United States and India and selected international models may not reflect the full variety of tax practices across the globe.

Dynamic Tax Policies: As tax policies will be dynamic, the results may change with future legislative amendments.

This research methodology is chosen to provide a holistic understanding of the complex interplay between corporate and personal tax systems, their economic consequences, and the practicality of integration models. Combining legal, economic, and comparative approaches for one purpose, the study gives actionable insights in the designing of efficient, equitable, and administratively feasible tax reforms.

5.Literature Review

Integration of personal and business income taxes has been a subject of interest to policymakers, economists, and legal scholars for many decades. This review builds on earlier studies and reports that provided foundational insights into challenges relating to double taxation, the implications of the integration on corporate financial behavior, and possible benefits and downsides to integrated tax systems. More generally, comparative frameworks and best practices found in the international area remain relevant to the US and Indian contexts.

5.1 Double Taxation and Its Economic Consequences

Double taxation, which holds that corporate profits are subject to both the corporation and the shareholders' levels of taxation, is a concept that has received much attention in tax policy literature.

Musgrave (1959): A classic paper that analyzed distortions created by classical tax systems. Musgrave stated that double taxation influences corporate financing decisions, through debt over equity financing, which enhances financial instability.[8]

Devereux and Griffith (2003): The author analyses the economic inefficiencies of double taxation that should not invest, and the unattractiveness of equity finance.

Auerbach (2002): The study examines the effects of taxation on corporate behavior by focusing that high tax rates on corporations and double taxation produce suboptimal capital allocation as well as economic growth.

These studies form the theoretical base for studying economic distortions of double tax, which in itself constitute a central facet of this research interest in integration between corporate and personal taxation and elimination of such inefficiencies.

5.2 Models of Integration in Tax Policy

Different integration models have been proposed and implemented across jurisdictions to overcome double-tax problems.

American Law Institute (1993): Proposed a full integration model for the U.S., suggesting that corporate profits should be taxed only once, either at the corporate or shareholder level. That can eliminate the bias in favor of debt over equity and make tax compliance much easier.

King (1977): Described the advantages of partial integration systems-Imputation system whereby shareholders claim credit for corporate taxes paid. This system reduces, but does not entirely eradicate double taxation.

Cnossen (2000): Elaborated on the practical applications and issues of implementing integration systems in developing economies pointing to the administrative complexities and revenue effects it may bring.

These works outline a framework on how to understand the different approaches taken in tax integration, which is critical for comparing the U.S. and Indian systems and their respective reform efforts.

5.3 Comparative Tax Systems: U.S. and India

The contrasting approaches of the U.S. and Indian tax systems to corporate and personal taxation are also addressed in comparison. Desai and Dharmapala (2006): Their study on U.S. corporate tax policies highlights the inefficiencies of the classical system, where corporate profits are taxed twice. They advocate for reforms that reduce the tax burden on equity financing to encourage investment.

Tax Cuts and Jobs Act (2017): While government reports and subsequent reviews emphasize that this law reduced corporate tax rates, the double taxation problem is not squarely addressed and there is an area for further reforms.

Dividend Distribution Tax (DDT) Regime of India :

Rao and Tilak (2020): The DDT system in India taxed dividends at the corporate level before distribution. An analysis showed that the system imposed substantial tax burdens on corporations and served as a disincentive for equity investments.

Reforms in 2020: The abolition of DDT and transition to the classical regime in India are momentous steps toward making corporate and individual tax liabilities coincide with each other. [9]However, Sahoo (2021) indicates that these reforms are not completely integrated; the shareholders are subjected to more intense individual taxes on their dividends.

These comparative studies explain structural ineffectiveness in both tax systems and the scope through which an integration can help address the problems.

5.4 International Best Practices

Many countries have successfully implemented integrated models of taxation that can be quite instructive for the U.S. and India.

Sweden's Equity-Neutral Tax System:

Lindhe, Södersten, and Öberg (2002): This paper provides information about Sweden's financing income taxation approach at uniform tax rates for all forms of financing: debt and equity. The equity-neutral system minimizes distortions and encourages balanced financing decisions.

Germany's Split-Rate System:

Niemann and Simons (2003): Analysed the German system, which taxes retained earnings at a relatively lower rate than the distributed earnings. In this system, reinvestment is encouraged and the tax on equity financing reduced.[10]

Imputation System of Australia

Magee (2018): Discussed how Australia's imputation system eliminates double taxation by allowing shareholders to credit corporate taxes paid. This model is lauded for its simplicity as well as its ability to encourage equity investment.

These international models provide a rich source of insights into designing integrated tax systems that are both efficient and equitable.

5.5 Challenges and Critiques of Tax Integration

While integration offers significant benefits, it also presents several challenges.

Revenue Implications:

Bird (2003): Discussed how integrating corporate and personal taxes can lead to short-term revenue losses for governments, particularly if corporate tax rates are lowered.

Administrative Complexity:

McLure and Zodrow (1996): Suggested that integration systems were not easily adopted in jurisdictions with complicated tax codes and limited administrative capacity.

Equity Concerns:[11]

Piketty and Saez (2003): Cautioned that integration may serve the interest of high income levels and big firms, and hence call for careful calibration of tax rates and exemptions.

These arguments point to the importance of proper design and consultations with involved parties during integration reforms as this study points out.

5.6 Synthesis and Research Gap

This sets out a comprehensive understanding of the economic distortions arising from double taxation and the potential benefits associated with integration, as well as specific issues related to the challenges in implementing such reforms. Still, much is left wanting within the contexts of developing specific models for tailored integration of diverse economic environments, such as the U.S. and India. This research addresses these gaps by:

Carrying out a comparative analysis of the structural inefficiencies of the tax systems in the U.S. and India.

Drawing insights from international best practices to proffer context-specific reforms for integration.

Analysis of the viability of corporate and personal income tax integration in the U.S. and India in terms of both economic and administrative feasibility.[12]

Thus, by bridging this gap, the research will speak to the larger policy discourse of tax and its roles in ensuring efficiency, equity, and stability in the economy.

6.Criticism

Although tax integration attracts several advantages like elimination of double taxation, improvement in economic efficiency, and promotion of equity finance, the idea is fraught with criticism and controversies.[13] The section attempts to discuss the main criticisms of tax integration models in the context of theoretical debates and challenges that are posed in implementing them both by U.S. and India.

6.1 Revenue Implications

The most serious criticism of tax integration would likely be the potential to lower government revenues, especially during the transitional period. A reduction or elimination in the double taxation of corporate profits may result in a low effective tax rate on corporate distributions.

Bird (2003) argues that though integration reduces tax distortions, it may result in short-run revenue losses as well, mainly in economies where corporate taxes happen to be quite significant. This is especially concerning to developing economies like India, as corporate tax happens to contribute significantly to government revenues.

In the U.S., the Congressional Budget Office (2018) has said that full integration may worsen fiscal deficits, without countervailing action by revenue-raising measures.

6.2 Equity Concerns

Another criticism is that tax integration may favor high-income individuals and large corporations.

Piketty and Saez (2003) suggest that if these policies are not designed properly, integration policies may exacerbate income inequality because they might give the opportunity to affluent shareholders not to bear the added tax burden[14]. These tend to be the type of shareholders present in substantial numbers within the shareholder base in the U.S. Consequently, it may often have a regressive impact on the overall tax system.

In India, where the concentration of shareholder wealth lies with a relatively minor fraction of the population, the change in taxing dividends at the level of the shareholder may have inadvertently increased the wealth gap through rising disposable income of the top stratum of net-worth individuals (Rao and Tilak, 2020).

6.3 Administrative Complexity

An integrated tax system is administratively very burdensome to implement. McLure and Zodrow (1996) highlight the complexities of transitioning from a dual tax system to an integrated one, particularly in jurisdictions with fragmented tax codes and multiple levels of government. For instance, aligning corporate and personal tax rules requires recalibrating withholding mechanisms, dividend tax credits, and exemptions, which can be both costly and time-intensive.

In India, administrative inefficiencies and enforcement gaps have always undermined tax reforms. The transition from the Dividend Distribution Tax to a classical system has already faced compliance challenges, as noted by Sahoo (2021).

6.4 Investment Behavior and Market Distortions

Although tax integration is believed to promote equity financing, some studies argue that it brings about unintended distortions in investment behavior.

According to Desai and Dharmapala (2006), elimination of the debt-equity bias could result in overcapitalization by corporations on equity financing while neglecting other financially feasible alternatives.

Partial tax integration reforms in India have sometimes been criticized for favoring larger, more established corporations over smaller businesses that rely more heavily on retained earnings and debt financing (Rao and Tilak, 2020).

6.5 Political Resistance

Tax integration also faces several political resistances from different stakeholders who benefit from the current tax regime.

However, according to Cnossen (2000), entrenched interests, such as corporations that exploit tax loopholes or policymakers hesitant to forgo revenue, are critical barriers to the implementation of integration reforms.[15]

Examples include India where the abolition of DDT was not supported by corporations, concerned about increased compliance costs and individual taxpayers concerned about increased personal tax liabilities, respectively (Rao and Tilak, 2020). In the US, full integration of taxes has been thwarted due to fiscal impact concerns and interest groups' opposition in the American Law Institute, 1993.[16]

6.6 Balancing Efficiency and Equity

The critiques emphasize the critical tension between efficiency and equity in tax policy design. Although integration provides economic efficiency through avoidance of double taxation, the distributional impact and administrative feasibility of its design remain contentious. Piketty

The criticisms of tax integration attract attention to the difficulty in designing reforms that balance efficiency with equity and administrative simplicity. The undeniable benefits of tax integration might thus be placed in a proper balance by careful policy design and intervention to engage stakeholders so that badly needed reforms have the intended effects without unpleasant adverse consequences.

7 Conclusion

This study reveals the need to integrate personal and business income taxes to eliminate the inefficiencies and distortions arising from double taxation. A comparison of the U.S. and Indian tax systems shows that though these countries have both made efforts in reducing the incidents of double taxation, there still exist considerable gaps in bridging a more efficient and equitable tax structure.

The classical tax system imposed by it on the corporate profits and shareholders carries on with the burden in the United States, thus encouraging the debt financing over equity is increasing the financial risks and hinder efficiency in capital allocation. India's approach to remove the DDT and taxing the shareholders at their level has made its tax policy closer to integration, but administrative difficulties and issues of equity are carried on.

International examples of Sweden's equity-neutral system and Germany's split-rate system illustrate that well-designed integration models can, indeed, decrease the debt-equity bias but can contribute to economic growth and fairness. Success in such models, however, would depend on tailoring reforms to a local economic and administrative context.

While tax integration has several benefits, such as economic efficiency, fairness, and administrative simplicity, it also presents challenges. Challenges include revenue shortfalls, administrative complexities, and potential equity implications. Policymakers in the

U.S. and India must concurrently pursue these opposite goals so that the reforms reap sustainable benefits

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Silent Scars: The Intersection of Law, Culture, and Female Genital Mutilation in India

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Abstract

The paper examines the deeply entrenched practice of Female Genital Mutilation/ Cutting (FGM/C) within certain communities in India, where tradition often trumps the rights of individuals. This research seeks to analyse the prevalence and significance of FGM/C as a religious and customary practice, understanding its implications through the lens of constitutional protections. The objective of this research is to evaluate whether FGM/C qualifies as an essential religious practice under Article 26 of the Constitution of India. By determining the adequacy of existing legal provisions in penalizing this practice, the research explores whether these frameworks are constitutionally valid. Ultimately, the paper seeks to challenge the cultural practice that invalidates the life and dignity of women, urging for a nuanced approach where cultural sensitivity meets robust legal reform.

The research emphasises the need for comprehensive legal reforms to eradicate FGM/C and uphold constitutional values. As Mahatma Gandhi aptly said, *"The measure of a country's greatness is in how it treats its women."* The paper envisions a future where India's greatness is defined by the empowerment and dignity of its women, free from the shadows of oppressive traditions.

Keywords: Female Genital Mutilation, Essential Religious Practice, Circumcision, Dawoodi Bohra

Introduction

The practice of FGM is one that's veiled by the hands of patriarchy and the everlasting need for authorities to have control over women's bodies and individual autonomy. The World Health Organization defines the practice of FGM/C as "All procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons." The Organization has also upheld that the practice does not possess any health benefits. Rather, it can lead to severe bleeding and problems urinating, and later cysts, infections, as well as complications in childbirth and increased risk of newborn deaths.[1]

The WHO has classified the practice into four types:

1. **Type I** – Partial or total removal of the clitoral glans (the external and visible part of the clitoris, which is a sensitive part of the female genitals, with the function of providing sexual pleasure to the woman) and/or the prepuce/clitoral hood (the fold of skin surrounding the clitoral glans). When it is important to distinguish between the major variations of Type I FGM, the following subdivisions are used:
   a. **Type I a** - Removal of the prepuce/clitoral hood only.
   b. **Type I b** - Removal of the clitoral glans with the prepuce/clitoral hood.[2]
2. **Type II** – It is the partial or total removal of the clitoral glans and the labia minora (the inner folds of the vulva), with or without removal of the labia majora (the outer folds of skin of the vulva). When it is important to distinguish between the major variations of Type II FGM, the following subdivisions are used:
   a. **Type II a -** Removal of the labia minora only.
   b. **Type II b -**Partial or total removal of the clitoral glans and the labia minora (prepuce/clitoral hood may be affected).
   c. **Type II c -** Partial or total removal of the clitoral glans, the labia minora and the labia majora (prepuce/clitoral hood may be affected).[3]
3. **Type III –** Often referred to as **infibulation,** Type 3 includes the narrowing of the vaginal opening with the creation of a covering seal. The seal is formed by cutting and repositioning the labia minora or labia majora. The covering of the vaginal opening is done with or without removal of the clitoral prepuce/clitoral hood and glans (Type I FGM). When it is important to

distinguish between variations of Type III FGM, the following subdivisions are used:

a. **Type III a** - Removal and repositioning of the labia minora.
b. **Type III b -** Removal and repositioning of the labia majora.[4]

4. **Type IV** includes all other harmful procedures to the female genitalia for non-medical purposes, for example, pricking, piercing, incising, scraping and cauterization.[5]

Despite India not being a part of the UNICEF list of 31 countries where FGM/C is still predominant, the continuance of the practice in the country is significant. The procedure is widely practised by the Dawoodi Bohra sub-sect of Shia Islam,[6] as well as by other Muslim sects in the Malabar Region of Kerala.[7]

Religious, Culture and History

In India, FGM/C is practised predominantly by the followers of the Islam religion. Globally, there have been accounts of it being practised by Christians as well as Jews. The primary sources of Islam are the Quran, Sunna, Ijma and Qiyas. Sunna or Ahdiyas are the traditions of the Prophet. These include the utterances or sayings of the prophet (Sunnat-ul-Qaul), the doings or the behaviour of the prophet (Sunnat-ul-fail) and the silence of the prophet on certain matters which was taken as his implied consent (Sunnat-ul-Taqrir). It is not obligatory for the followers of the religion to adhere to the Sunna; rather, it is encouraged to follow. Both Female and Male circumcision are mentioned in the Sunna. In the most popular Hadith that talks about Female Genital Mutilation, it is said that there was a woman called Om Atteya who performed circumcision on women and that the Prophet had told her:

"Do not cut her severely as that is better for a woman and more desirable for a husband."[8]

Nevertheless, the said Hadith is considered to be weak. Islamic scholar Abu Dawood commented on this Hadith, saying, "It was weak because the transmission was interrupted and Mohamed Ibn Hassan, one of the narrators, is anonymous, thereby rendering the Hadith weak."[9] Shams-ul-haq Azeemabadi, an Indian scholar of Hadith, commented on Abu Dawood's statement, saying, "The Hadith is weak because of the confusion about and "weakness" of the narrator, Mohammad Ibn Hassan Al Kufy".[10] The narrator was crucified for being an atheist. Scholars have claimed that he fabricated over 4000 Hadiths, attributing them to the Prophet. Even

though scholars have strived to trace back the authenticity of the Hadith, all of them were rendered weak. To conclude, the hadith of Om Atteya was of no benefit.

In the second Hadith, the prophet says,

"*Circumcision is an obligatory act of Sunna for men and an honourable act for women.*"[11]

Howbeit, this Hadith, as well, was rendered weak as the Hadith was traced back to Al Haggag Ibn Artaa, who was a liar and hence cannot be considered a credible source. In spite of there being three more hadiths which are often cited to support the act of female circumcision, it lacks authenticity. While weak narrators undermine some Hadiths, others are misinterpreted.

This leads us to shift our focus towards the cultural history and background of the practice. In India, the practice is most common among the Dawoodi Bohra community, a sect from the far Middle East who migrated to India centuries ago. Many of them settled in Surat, Mumbai, and a tiny proportion settled in Kerala. The Dawoodi Bohra is headed by a "Syedna" who has various powers, including the power to excommunicate the members of the community.

The practice is popularly known as *Khatna* or *Khafz* amongst the members of the community.[12] The practice was performed on young girls between the age of 6-8 years. Moreover, even women from other communities who wanted to marry into the community had to undergo the procedure. Traditionally, the practice is administered by a midwife or *mullani* without anaesthesia. The reasoning of the community to justify this practice is that the clitoral hood is an unwanted part of the body known as "*Haram ki boti*" or "*Source of Sin",* which can cause them to go astray from their marriage and result in infidelity towards their partner. Another interesting reasoning was that FGM/C possesses certain health benefits when the reality is much darker. The "unharmful obligation" can lead to a plethora of health issues, starting from severe pain and HIV to even death.[13]

Despite the secretive nature of the practice, India has seen public outrage over it many times, even from people in power. In 2011, Farida Bano, a then-21-year-old law graduate, raised her voice about the injustice that had been done to her.[14] Her cry for justice was dismissed by the spokesman of Syedna Mohammed

Burhanuddin, the 52nd Dai-al-Mutalaq. He said, "Bohra women should understand that our religion advocates the procedure, and they should follow it without any argument."[15]

In 2016, during a sermon in Mumbai, Syedna Mufaddal Saifuddin encouraged the practice of FGM, stating, "The act has to happen! If it is a man, then it is a right, it can be openly done, but if it's a woman then it must be done discreetly, but then the act has to be done".[16] A few months prior to this incident, the Syedna had issued a press release upholding the practice as "religious rites that have been practised by Dawoodi Bohras throughout their history".[17]

Yet a thorough perusal of the Hadiths and religious texts proves that the heinous practice of FGM/C seems to be rooted in cultural traditions rather than religious mandates, as there is no conclusive evidence to prove that the Prophet or his family practised or advocated female circumcision.

Constitutional Analysis

The Constitution is not merely a legal framework; instead, it is the guardian of individual rights and the arbiter of cultural practices in a dynamic society. The Indian Constitution balances the weight between fundamental rights and religious practices, ensuring that there is no injury to the latter. It strives to create a delicate balance between progress and preservation.

In 2017, a Public Interest Litigation was filed before the Hon'ble Supreme Court of India by Sunita Tiwari, an advocate and human rights activist. The issue brought before the court by the petitioner was the constitutionality of Articles 14,15,21,25 and 26. The Dawoodi Bohra community argued that the practice was protected under Articles 25 and 26 of the Indian Constitution.[18] The Supreme Court took the stance that the bodily integrity of a woman cannot be violated without her consent.[19] This stance was a ray of hope for the women who have been fighting against this practice for years. While the petition is still pending, it has created awareness amongst the vast population who were once ignorant about it.

Article 14 : Right To Equality

Article 14 of the Constitution of India safeguards the fundamental right to equality before the law. This fundamental right, being a part of the Golden Triangle of the Indian Constitution seeks to ensure that all individuals are treated with equality and respect. The article states that:

"*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*"[20]

The barbaric practice of FGM/C is inherently discriminatory towards women by forcing them to undergo a procedure based on archaic and patriarchal norms, so harmful for their physical, mental, psychological and sexual well-being. Furthermore, it is pertinent to note that even though male members of the community also undergo the procedure, it would be irrational to equate it with FGM/C as the gravity of both offences is mountains apart. While male circumcision poses health benefits, such as reducing the risk of contracting HIV or other Sexually Transmitted Diseases (STI),[21] the fatal practice of FGM/C has proved to render no health benefits.

The practice stems from the entrenched need for men to have control over women's fundamental rights and bodily autonomy. The Hon'ble Supreme Court of India has upheld women's fundamental right to bodily autonomy in the case of *Joseph Shine v. Union of India*.[22] This combined with the patriarchal society of our country and the blatant ignorance of those in power has equipped in the prevalence of this barbaric practice even in the 21st century especially in urban metropolitan cities like Mumbai.

Article 21 : Right To Life And Personal Liberty

Article 21 of the Constitution of India is often and rightly referred to as the heart and soul of the Constitution. It is an indispensable part of the golden triangle of the Constitution. The article states that:

"*No person shall be deprived of his life or personal liberty except according to procedure established by law*."[23]

It has been well-established that FGM/C has various implications for the physical health of an individual, from perinatal risks to even death. On the psychological front, it can cause Post Traumatic Stress Disorder (PTSD), anxiety, somatization, etc.[24] These implications directly harm the animal existence of an individual as well as the quality of their life. Considering the wide ambit of the Article, FGM/C infringes on the right to life, dignity, privacy, health, and bodily autonomy. The Hon'ble Supreme Court of India has upheld this right to be a fundamental right under the purview of Article 21 in a plethora of cases.

In the landmark judgement in the case of *Maneka Gandhi v. Union of India*,[25] the Hon'ble Apex Court of the country held that

the right to life and personal liberty under Article 21 is not limited to mere animal existence but includes the right to live with dignity. By forcing women to undergo this heinous practice, women are being tried to be reduced to mere objects for the physical satisfaction of men. Women are not just purloined of their health and sexual well-being but also of their individualism as humans.

In the case of *Ranjan Sinha v. State of Bihar*,[26] the Hon'ble High Court of Patna held that the state's responsibility does not end by merely not restricting the right to human dignity; rather, it must take steps to protect and promote human dignity. It also held that the civil, political and social rights, as well as the economic and social freedom of the citizens, are protected under Article 21.

The practice of FGM/C, where girls as young as 6 or 7 are forced to undergo the procedure even without anaesthesia, is a blatant assault on their physical and mental well-being, stripping them of dignity and harm under the veil of religion. Moreover, the implications of the practice on the sexual well-being of an individual.[27] The practice infringes on women's autonomy over their bodies and thereby undermines their sexual and psychological integrity. This constitutes a grave violation of the right to privacy guaranteed under Article 21 of the Constitution. The Hon'ble Supreme Court of India, in the case of *A(Mother of X) v. State of Maharashtra & Anr*,[28] has upheld the right to bodily autonomy under the purview of Article 21.

A perusal of these case laws or the plethora of other cases where the Hon'ble Court has interpreted the ambit of Article 21 proves that the practice of FGM/C is a violation of the fundamental right to life and personal liberty. This highlights the unconstitutionality of the practice, making it an absolute necessity to address it to ensure that the Constitution is upheld to its fullest sense.

Essential Religious Practices

India is a land of diversity and is home to various cultures and religions. This makes it of utmost necessity to ensure that the right of every individual to freely practice their religion and manage their religious affairs is protected. The Constitution of India has safeguarded these rights in Articles 25, 26, 27 and 28. But, the makers of the Constitution with the knowledge that religion can at times blind the rationality of the people enforced certain "reasonable

restrictions on this right and granted the state with the power to intervene in these religious matters to uphold the Constitution.

Article 25(1) of the Indian Constitution states that:

Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.[29]

Article 26 of the Indian Constitution states that:

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a)to establish and maintain institutions for religious and charitable purposes;

(b)to manage its own affairs in matters of religion;

(c)to own and acquire movable and immovable property; and

(d)to administer such property in accordance with law.[30]

The fundamental rights guaranteed under these articles are not absolute and are subject to the reasonable restrictions mandated by the Constitution, i.e., public order, health and morality. Moreover, for a religious practice to be upheld by the constitution, it has to qualify the test of essential religious practices (ERP).

The analysis of whether FGM/C falls under the purview of these reasonable restrictions requires understanding the definitions and interpretations of these terms. In the case of *Ram Manohar Lohia v. State of Bihar*, the Hon'ble Supreme Court of India held that "The contravention of law always affects order, *but before it can be said to affect public order, it must affect the community or the public at large."* Amongst the Dawoodi Bohra Community, the prevalence of FGM/C varies from 75% to 85%.[31] Furthermore, this practice causes harm, spreads fear and threatens the moral fabric of the society, thereby disrupting public order. Th well established health implications of the practice and the barbaric nature of it comes under the purview of health and morality respectively.

The doctrine of Essential Religious Practices was invented by the Hon'ble Supreme Court in the case of *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*[32] to determine the constitutionality of religious practices and to determine whether the practice in question is protected by Article 26 of the Constitution. In this case, the court stated as follows,

"In the first place, what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself."[33]

It is pertinent to note the analysis made by the Hon'ble Supreme Court in the case of *Javed & Ors v. State of Haryana & Ors*.[34] The court held that, "*What is permitted or not prohibited by a religion does not become a religious practice or a positive tenet of a religion. A practice does not acquire the sanction of religion simply because it is permitted*."[35] The same was upheld in the case of *Shayara Bano v. Union of India*.[36]

In the matter of FGM/C, various Hadiths that mention female circumcision have been deemed to be not credible by Islamic Scholars. Moreover, there has not been any credible mention of FGM/C in the primary sources of Islam, i.e., Quran, Sunnah, Ijma and Qiyas. This establishes that FGM/C is not a practice that is essential to the religion.

Existing Provisions And Deficiencies

In India, there are no special legislations with a focus on eradicating the practice of FGM. However, the practice can be penalized under Sections 115[37] and 117[38] of Bharatiya Nyaya Sanhita (Sections 324[39] and 326[40] of the Indian Penal Code).

Despite its existence, these provisions have failed to curb the practice significantly. In 2017, the then Minister for Women and Child Development clarified that FGM/c was illegal and said that "*if the community does not stop it voluntarily, the government will bring in a law to ban the practice*"[41]. Even though this statement was a ray of hope for countless women fighting for their dignity, no further action was implemented following it.

In 2013, the Prevention of Children from Sexual Offences Act (POCSO) was passed despite there being an existing provision in the Indian Penal Code to penalize sexual harassment. This action resulted in the reporting of sexual offences against children and in speedy trials with the aid of Special Courts.[42] Similarly, implementation of a special legislation focusing on FGM/C would significantly aid in the eradication of the practice.

Recommendations

On these premises, recognizing FGM/C in India and protecting women's constituent rights requires a coordinated strategy. It is important for specific legislation to be passed that

categorically criminalizes the practice of FGM/C. The law should have procedural measures to avoid its continuance in the name of culture or religion. There is also a need to increase community awareness of the health risks of FGM/C, both physical and psychological, and legal consequences, besides addressing other cultural rationales for FGM/C through the involvement of community members through engaging leaders, teachers, and healthcare workers in the development of alternative rite of passage which is not dangerous to the lives of young girls. Through legislative awareness, component and state education, and collective stand, this unacceptable practice has to be challenged and erased to enforce the constitution that guarantees equality, human dignity, and personal liberty of every citizen.

Conclusion

Female Genital Mutilation/Cutting has become a conventional violation of women's constitutional rights in India. It is against the fundamental rights of women to equal and non-discrimination, liberty, and integrity, as well as the right to bodily integrity. Despite the practice being illegal, its presence in communities such as Dawoodi Bohra is a strong indicator that requires society to come in so as to help.

The constitutional principles of equality, non-discrimination, and dignity demand that the state take decisive action to eliminate such practices. The state must, therefore, not only meet the constitutional requirement but also pave the path towards a community that recognizes the rights and health of all its people through specific legislation and action, effective community participation, and awareness.

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Sports Betting in India: A Legal Framework for Regulating Cricket and other Sports

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Abstract

This paper provides a thorough exploration of the sports betting landscape in India, focusing on cricket. It examines the history of gambling and betting in India and the importance and need for a legalised framework to regulate sports betting in the country, using insights from the Law Commission of India's Report and the implications of the Supreme Court's decision in different case laws; cricket, a sport which is deeply implanted in Indian culture, is prone to large-scale betting, much of it conducted illegally. The Federation of Indian Chambers of Commerce and Industry (FICCI) estimated that the betting market, which is conducted underground, is valued at approximately ₹3,00,000 crores.[1], proving the urgent need for a proper legislation. This paper will further examine India's current legal landscape concerning betting and the legal vacuum, which is dominated by the Public Gambling Act of 1867, and explores the need for a centralised regulatory framework. This paper also examines the distinction between gambling and betting. This paper advocates for a legal approach distinguishing games of skill from games of chance, blending international practices & technological safeguards to address the societal concerns that are associated with gambling addiction and financial risks. Further, it provides recommendations such as smart card on how a well-regulated sports betting industry will help to promote economic growth, eventually leading to a reduction in the number of crimes against the Individual as well as state and also ensuring consumer protection while aligning with India's socio-economic goals.

Introduction

1.1 Background & Need

The popularity of sports betting, particularly in cricket, has significantly increased in recent years In India. Cricket is a sport with a huge fan base that connects millions of people in India. With the growing fanbase of cricket, there has been a significant rise in illegal betting activities. The Public Gambling Act of 1867[2]A law passed during British colonial rule was formed to decrease the number of on-site locations, which is ineffective due to the increase in internet-based betting. The growth of illegal betting introduces severe risks for society at large. It has created a lot of situations that lead to an increased number of financial frauds, black money generation, and even match-fixing, as operators manipulate odds and outcomes to maximise profits. The lack of a regulatory framework places bettors at a disadvantage, as they cannot seek legal recourse in the event of disputes. A lack of a proper regulatory framework drives rapid growth in black money generation, which also provides leverage to betting website operators to create an informal, unregulated betting environment full of fraudulent activity.

1.2 History

Betting and gambling have been a part of human civilisation for thousands of years. In India, the history of gambling and betting dates back to the era of Mahabharata and Ramayana, when kings such as Yudhishthira lost their kingdom, brothers, wives, freedom & wealth in the game of dice[3]. Kautilya in Arthashastra laid out the importance of state-regulated gambling in minimising the negative impact and potential economic growth of the state. Even in ancient Europe, gambling was an accepted practice in their culture. In Greek mythology, Gods like Zeus, Hades, and Poseidon played the game of dice in order to divide the world among themselves[4]; Romans, on the other hand, had specific places for gambling, and the authorities sometimes imposed penalties to minimise the negative social impact of gambling. Betting and gambling have evolved through various forms, from dice games to betting on animal fights and other activities, highlighting its persistence across different cultures and civilisations. This shows that even though betting is risky, it still plays an essential role in society. The technological advancement enabled online portals which helped people to place money on betting unrecognised.

1.3 Scope

This paper will provide a research on Public Gambling Act which is presently the only legislation governing sports betting in India. Further examining the difference between games based on skill and based on chance. The paper further aims to propose a centralized regulation that effectively governs sports betting by maintaining a balance between economic growth and societal safeguards.

1.4 Research Questions

- Is the present legal framework Implemented in India sufficient to regulate sports betting effectively?
- Can International Regulatory guidelines on sports betting be practical in Indian societies?
- How can India maintain a balance between the economic benefits of legalised betting while also addressing the societal concerns related to gambling?

2. Game of Skill vs. Game of Chance

2.1 Definition and Differentiation

The critical test to determine whether any activity is based on chance or skill depends on the dominant factors, such as if the game's outcome depends on luck and is entirely unpredictable. There is no role of skill involved. Under Indian Laws, all the games or activities that are based on chance are classified as gambling and are prohibited. Whereas when it is based on skill, the activity is placed under exemption and has no restrictions. [5]As per this classification, the doors for legalising cricket betting could be opened, as it would align with existing legal frameworks governing skill-based games.

2.2 Supreme Court Rulings

2.2.1 **Board of Control for Cricket in India v. Cricket Association of Bihar & Ors[6]:** Under this case, the court ordered a committee to be set up to check and recommend changes necessary in the working of BCCI by evaluating its MoA and rules. The committee even reviewed and presented a proper difference between match-fixing and gambling. The committee also mentioned that match-fixing should be considered an offence, whereas gambling must be regulated.

2.2.2 **Public Prosecutor v. Veraj Lal Sheth[7] :** The Madras High Court, in this case, differentiated between wagering & betting, establishing a connection between a game of chance and skill. Where there is a game of chance, the same is

considered wagering, whereas when an element of skill is involved, it is considered betting.

2.2.3 **RMD Chamarbaugawala v. Union of India[8]:** The Supreme Court of India depended on the "skill test" to decide when an activity is considered gambling. It even stated that where there is a game of skill, the same must not come under the ambit of gambling but should be viewed as a commercial activity as per Article 19(1)(g)

2.2.4 **State of Andhra Pradesh v. K. Satyanarayana & Ors[9]:** In this case, the court stated that rummy should be considered a game of skill as "it requires a certain amount of skill because the fall of the cards has to be memorised and the building up of rummy requires considerable skill in holding and discarding cards". Therefore, in this case, the court depended on the 'Skill Test.'

2.2.5 **K.R. Lakshmanan v. State of Tamil Nadu & Anr[10]:** The Supreme Court, in this case, while distinguishing between the game of chance and skill, stated that in a game of skill, even though the element of chance cannot be eliminated. The skill is one in which winning depends mainly on the training, experience or other elements the player can quantify.

2.2.6 ***M/S Pleasantime Products Etc vs Commr.Of Central Excise, Mumbai-1 Etc[11]:*** In this case, the Supreme Court held that Scrabble is a game, not a puzzle. As in the case of Scrabble, the result is not fixed and depends on the player's skill.

2.3 Implications for Cricket Betting

Cricket, a sport based on every player's skill & team's skill to reach an outcome, must be considered a game of skill and removed from gambling. Cricket is a game where factors such as analysing weather & pitch conditions and previous records of both the teams playing against each other depict a skill element. Categorising cricket into a skill-based game would also help the legislature develop guidelines to regulate and grant licences for operators providing a safe digital platform to protect bettors. Measures such as age verification, limits on spending and campaigns about responsible gambling would help prevent addiction to gambling in youth mainly. Therefore, legalising cricket betting in India can significantly

transform the betting industry. Instead of causing harm to the society, it will help the society grow and adapt to the changing trends.

3. Current Regulatory Framework and Limitations

3.1 Public Gambling Act and IT Act

The act that governs gambling in India is the Public Gambling Act of 1867[12] Which prohibits most forms of gambling in India. It targets games based on chance and gives an exception to play based on skills. The act was enforced during colonial rule, so it is considered outdated nowadays as the scope of the Public Gambling Act is limited to physical gambling houses and does not consider present-day practices such as online betting websites.

The Information Technology Act of 2000[13] provides a framework for cybersecurity, electronic transactions, and online content regulation. Still, the legislation vacuum comes into the picture as the act does not include provisions for specific online gambling or betting activities.

3.1.1 State-Specific Regulations

3.1.2 The Bombay Prevention of Gambling Act, 1887[14], applies to Gujarat and Maharashtra. Under this legislation, S.3 excludes betting on horse and dog races, and S. 13 exempts games involving skill.

3.1.3 The Meghalaya Prevention of Gambling Act, 1970[15]: This act applies in Meghalaya and exempts games involving the element of skill. It also allows government—exempt games or sports from the scope of gambling via notification.

3.1.4 The Rajasthan Public Gaming Ordinance, 1949[16]:- Applicable in Rajasthan**,** the act distinguishes between game of chance and skill. It only allows a game of skill if not conducted in the gaming house.

3.1.5 The Goa, Daman and Diu Public Gambling Act, 1976[17]: Applicable in Goa, Daman, Diu, the act allowed games of electronic amusement and slot machines in 5-Star Hotels under S.13A. Appointment of Gaming Commissioner under S.13C and its powers in S.13D.

3.1.6 The Tamil Nadu Gaming Act, 1930[18]: The act is applicable in Tamil Nadu and prohibits gaming. As per S.11 of this act, Games of Mere skill are exempted from the scope given in the case of Dr K.R. Lakshmanan, where the Supreme Court held that horse betting is legal.

3.1.7 The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015[19]: Applicable in the state of Nagaland, Gaming under this act is defined as betting on a game of chance. The game of skill stands for games where skill predominantly prevails over chance, and it also includes team selection by analysing different stats.

3.1.8 The Telangana Gaming Act, 1974: [20]Applicable in the state of Telangana, the act prohibits online gaming under S.3; under this act, the violations must be considered as Non-Bailable and cognizable offences.

3.2 Key Challenges in the Current Framework

The Absence of centralized law creates difficulties in effective monitoring and controlling betting activities, as state laws are not consistent and create a legal vacuum.[21] The major issue is the rise of online betting, which is usually done on online websites that operate internationally and outside Indian Jurisdiction. If a centralized legislation is passed, it would provide uniformity and clear guidelines and help to combat the growing addiction to gambling and betting.

4. Social costs and Economic Benefits of Legalized Sports Betting

4.1 Economic Benefits

If sports betting is legalised in India, it can help generate economic benefits. As per a report by FICCI, the betting market, which is not regulated and stands illegal in India, is valued at Rs.3,00,000 Crore[22], which depicts that if regulated, it will generate significant revenue. Not only Economic, but it would also create other benefits such as job creation in technology and customer support centres.

4.2 Social Costs

Economic Benefits of legalised sports betting are crucial, but social costs must be considered. The addiction to gambling is a serious problem. It may also lead to financial crises for the bettors which may lead them to huge debt, loss of saving or bankruptcy.[23] These financial crises can lead to emotional stress and can lead to disintegration of families. The social costs not only impact the bettors but also the people dependent on the person. In order to address or minimise the risks a centralized framework is a necessity and must also include

4.3 Balance between economic benefits and social costs

Legalising sports betting would require a balance between economic benefits and social costs. As though it may reduce illegal activities and increase revenue generation still, the addiction to gambling and the risk of financial loss must be considered. By implementing proper regulatory framework, India can put to use the benefits by minimising the negative social impact.

5. International Models of Sports Betting Regulation

5.1 The Gambling Act of 2005[24]:

The Gambling Act of 2005 is applicable in the United Kingdom for regulating sports betting. Through his act, an authority was set up named the UK Gambling Commission, a centralised body responsible for licencing and consumer protection. Operators have a deposit limit and mandatory age verification systems in order to protect individuals, especially minors. The UK's act provided a proper balance between economic advantages and safeguarding public health. The act helped generate significant tax revenues and job creation.

5.2 Professional and Amateur Sports Protection Act[25]:

The PASPA Act is applicable in United States. The intent behind the act was that they believed by passing this act would help to preserve professional and amateur sports. Eventually many states such as New Jersey had faced economic hardships[26], and they protested against the PASPA act in order to get it repealed by arguing state sovereignty and their powers to pass their own gambling laws. The PASPA was repealed in 2018[27] which opened doors for states to legalise betting. Thus, while the removal of PASPA has helped states to remove economic hardships, but states must also maintain a balance between socioeconomic benefits and the risks accompanied with gambling.

5.3 Interactive Gambling Act[28]:

The IG act passed in the year 2001 is a law that governs sports betting in Australia. The IG Act represents a significant step towards achieving a balance between the benefits and risks involved in betting, aiming to curb illegal gambling activities while also ensuring a proper regulated structure for licensed services.[29] The act mainly focused on online gambling. The act further addresses the sociocultural and economic factors influencing youth behaviour the

IG Act emphasises on the challenges and responsibilities associated with modern gambling regulation mainly online betting.

6. The Role of Technology and Digital Platforms

6.1 Technological Advancements in Betting Platforms

Technological advancements have transformed the landscape of sports betting, particularly in the context of ease of access. Sports betting traditionally relied on offline betting shops that limited participation to general public. However, in modern times the rise of internet allowed bettors to access a digital platform and place bets by conveniently sitting at their homes.[30] This transformation from offline to online betting helped users' to study their data and keep a record of their betting. Furthermore, mobile technology has introduced new ways on how bets are placed, enabling public to place bets via smartphones and apps[31]. The integration of AI has also helped users where AI places bets on your behalf and you can set a limit to when it should auto sell. This evolution has triggered discussions that betting should be regulated and guidelines must be set up for responsible gambling, highlighting the need for a balanced approach.

6.2 Blockchain and Transparency

Blockchain is a modern-day technology which is a solution which would provide transparency and accountability in sports betting. Blockchain is a technology which stores and records the transaction and prevents fraud[32] and ensure fair play between operators and bettors. India may consider implementing blockchain technology in order to oversee betting transactions, which would confirm that operators comply with regulatory requirements and consumer protection standards.

6.3 Smart Card Approach:

The smart card technology which was recommended in the Law Commission's Report No. 276[33] is a method to set limits on personal bettings of an individual and protecting him from financial crisis. The card would collect the data related to the bettors income and then they can bet based on the percentage allowed to them For Eg. If a limit is set by govt. to 10% of income then once a individual uses that limit he cannot further bet and would help prevent gambling addictions and promote responsible gambling practices.

7. Suggested Legal Framework for India

7.1 Centralized National Authority(CNA)

A centralized national authority must be established in order to effectively regulate sports betting in India. The authority can be held responsible for granting licenses to operators and provide laws to be implemented across states which would also ensure a consistent approach in India on sports betting. The authority could also be used to monitor sports betting. A single authority can make decisions faster and would also ensure consistent enforcement of regulations and policies set up by the CNA.[34] Therefore, there is an immediate need of well-defined centralized authority which can promote accountability, This helps to create a balanced system of governance that benefits both operators and bettors.

7.2 Licensing and Regulation of Operators

A proper codified framework for licensing and regulation of operators is important to in order to safeguard the financial transactions, especially in the case of new or growing Fintech markets. India must ensure that operators adhere to uniform standards and uphold trust and transparency. It is important in present times as there is a rapid development in technological sector and the ongoing challenges posed by the cryptocurrency sector[35]. Not only effective administration but there is a need to draft proper policies which would minimise risks and bring out more benefits of gambling. As outlined in the Bali Fintech Agenda[36], A robust regulatory framework must encompass comprehensive measures to protect consumers and maintain financial stability. By regulating operators, India can promote the benefits of gambling or betting while protecting the interests of its citizens, thereby paving the way for sustainable economic growth in the digital era.

7.3 Taxation and Revenue Allocation

A taxation policy for sports betting would prove to be a major source of revenue for the government. Revenue which is generated from licensing fees and taxes collected from bettors could be allocated to sectors where allocation of funds is required for example public programs, including education, healthcare. This approach will help India to benefit from the economic potential of sports betting while supporting social initiatives. For example India has though not regulated cryptocurrency but has imposed a tax of 30% on profits earned from crypto which has generated a lot of revenue for government[37].

7.4 Social Responsibility and Consumer Protection

In order to protect bettors, a proper legal framework to regulate betting should include policies and guidelines for responsible betting, capping the betting limits, self-exclusion options, and setting up of awareness campaigns. Also, the regulatory authority should enforce rules against wrong or unfair advertising and ensure that operators adhere to ethical measures set up by a legislation. India must prioritize social responsibility in order to create a safe and regulated sports betting industry.

Conclusion

A legalized sports betting industry in India would help boost the economy and provide all regulatory advantages but it requires a vigilant and a proper approach. This paper concludes with suggestions for implementing a centralized regulatory framework that would prioritize social responsibility and consumer protection and provide a balanced approach towards economic growth with measures to prevent addiction. India can create a well-regulated sports betting industry if proper measures are implemented. Future research should focus on public sentiment, long-term economic impacts, and the role of technology in maintaining a safe betting environment also analysing the difficulties which might arise while implementing a act to legalise betting in India. Navigating through historical and modern methods of betting the paper also analyses the technological advancements which the industry has gone through and what all advancements are required in order to ensure fair betting opportunities to bettors and also to keep a check and stop the arbitrariness of the operators operating within territory of India. Upholding the smart card approach as given by the Law Commission's Report No. 276[38] which would also help minimize the financial crisis of individual's savings. The paper advocates for a well drafted framework in order to legalise betting in India.

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Evaluating The Landscape of Anti-Trust Laws in India

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Abstract

On the one side, consumers should be protected by antitrust laws so that fair competition and innovation can be promoted on the market. However, it's a step which goes a long way in avoiding monopolistic conduct and eradication of anti- competitive practices in the market to avoid the domination of a specific entity. India 's antitrust laws began with Monopolies and Restrictive Trade Practices Act of 1969 under which monopoly was to be dealt with through government intervention. With the economic liberalization and the change in the markets since 1991, the new Competition Act has been enacted in 2002. . It devotes much time to establish how the structure of the Indian market resembles the case of the US the presence of potent anti-trust laws like the Sherman act of 1890, the Clayton act of 1914 and federal trade commission act of 1914. And at the same time this system enables separate institution of enforcement and regulation bodies. It also embraces emerging digital behemoths including Google, Facebook, and Amazon that dominate global markets and has been under investigation, to protect consumer interest. The problems of the present market especially in relation to the digital platforms that define people's lives in most countries across the globe. Throughout the current paper, the first and second interrelated factors refer to enhancing cross-border trade and strengthening the effective means of regulators and staff. It will identify the proposed reforms to be brought to the antitrust system of India more apt for a digital centered world, for instance by separating the investigative and the adjudicatory responsibilities to be fair and furnish the CCI with adequate resources to cope up with the issues of the digital market. International cooperation is also

important because digital platforms are an international business. Most cartels and monopolistic behaviours do not respect national borders, hence the challenge of ensuring that most anti-trust behaviours are solved. Industry and consumers join together in international cooperation to prevent flip-flopping and to ensure that no platform up-ends its operations or changes its policies to avoid national antitrust rules.

Overall, this paper outlines the issues arising from digital platforms and suggests incremental changes to the Indian antitrust regime. Such measures seek to redress algorithmic collusion, self-preferencing, and cross-border enforcement which are fundamental to digitally competitive markets. Thus, the paper offers a broad strategy to regulate digital markets in India including proposing the separation of investigative and adjudicative functions, increasing the Commission's capabilities, introducing of sector-specific regulation of digital markets, and the focus on the international level.

Keywords: *antitrust law, competition policy, digital markets, regulatory frameworks, market concentration*

Introduction

The antitrust laws have the main purpose to guard consumers and encourage free competition and ideas in the market. But it is at least a step to cease and desist anti-competitive conduct, cease and desist monopolistic actions, and to eliminate dominant market positions. India has a very moderate level of experience in the current global antitrust regulation with the new legislation regulating the market competition by prohibiting anticompetitive agreements, position abuse, mergers and acquisitions which are having adverse impact on the economy backed by a new law **'Monopolies and Restrictive Trade Practices Act, 1969'**[1].

In India, due to globalisation and drastic increase of global market in 2002 there was a establishment of Competition Act,2002 which dealt with regulating the market and promoting free and fair trade practices[2]. United States is nation with great economical power and it has long history of antitrust regulation which initially started from Sherman Antitrust Act in 1890. Over the decade United States have developed and provided a civilized framework of Antitrust Laws which includes legislation, judicial precedents like The Sherman Act, Clayton Act (1914) and Federal trade Commission Act (1914)[3]**.** The economic reforms of 1991 made a shift in India's

regulatory landscape which emphasizes market liberation, privatization and globalization. After the reforms it exposed the limitation of the MRTP act in specific matter related to open market economy. The Indian and US antitrust frameworks have same objective but are different in approach and structure and enforcement mechanism. The US framework provides a mechanism which emphasis on consumer welfare and economic efficiency but the Indian Framework provide fairness and market accessibility.

The competition act replaced the MRTP Act shifting the effect from size base to behaviour-based regulation irrespective of a company bigger in size the action will be taken on the basis of behaviour of the company rather than on the size of the company.

Main Body

Judicial Interpretation and Enforcement Trends

Lack of concern for home buyers by DLF in using one-sided of pre-secured amounts by imposing and dictating prices and unreasonably and unilaterally extending delivery schedules also demonstrated the judiciary's ability to side with consumers as opposed to enterprises. Through this case, the authors showed how judicial interpretation can enhance the enforcement powers of regulatory authorities to act as a deterrent to exploitative conduct. Likewise, the **Cement Cartel Case**[4], which involved the cartel of some of the top cement manufacturing firms that were discovered by the CCI, put much emphasis on the judiciary in construction of the discourse of anti-competitive agreements under **Section 3 of the Competition Act**[5]. Coordinated conduct of these firms to manipulative price and output signals exposed the judiciary's sophistication in analytically disassembling integrated market behaviour in addition to punitive measures in addressing such conspiracies to realign market balance. India also has its own challenges that slow the enforcement of antitrust rules like a shortage of funds and extremely long court cases. While the Indian courts are effecting to solve these issues, the number of pending cases thwarts the process and often makes enforcement very ineffectual. For example, in some cases it is possible to resolve quarrels arising from cartels or domination by cleared severe criminals thus eradicating the legal system capability of halting such conduct.

In today's technical world the market expects a judge to be fully conversant with all nuances of how these markets operate. On the other hand, the United States can make its contribution to history by establishing precedents on antitrust for centuries like **The Standard Oil Co. v. United States (1911)**[6] or a sample case that showed that an influential decision of the court can control intense international competition such as **United States v. Microsoft Corp. (2001)**[7]**.**

The formulation and implementation of the antitrust laws in the US has been proactive and effective because of the enforcement mechanism while the Jeffries factor on its evolvement has helped the America antitrust laws to be responsive to change in the economy. Thus, judicial interpretation continues either as a strength or as an issue for India's legal landscape. To enhance timeliness and effectiveness of the enforcement of competition laws in India, certain judicial efficiencies need to be affected, capacity built, and, most crucially, improved cooperation between the judiciary and the CCI. When done properly, judicial interpretation can bring about the change from what has been the mainstay of antitrust regulation: a firefighting tool to being a strategic instrument in the governance of the economy.

Comparative Analysis: India and the United States:

On the other hand, the countries like the United States have made their judiciary used their judiciary to develop a vast history of antitrust case precedent with cases like **Standard Oil Co. v. United States (1911) & United States v. The companies chosen are Microsoft Corp. (2001)** global touchstones. The formulation and implementation of the antitrust laws in the US has been proactive and effective because of the enforcement mechanism while the Jeffries factor on its evolvement has helped the America antitrust laws to be responsive to change in the economy. Thus, judicial interpretation continues either as a strength or as an issue for India's legal landscape. To enhance timeliness and effectiveness of the enforcement of competition laws in India, certain judicial efficiencies need to be affected, capacity built, and, most crucially, improved cooperation between the judiciary and the CCI. When done properly, judicial interpretation can bring about the change from what has been the mainstay of antitrust regulation: a

firefighting tool to being a strategic instrument in the governance of the economy.

Institutional Mechanism

The institutional framework provides a framework which act as a backbone of regulatory system, ensuring the principles of competition law which are upheld through investigation, adjudications and penalties for violation of the law[8].

Institutional Mechanism in India

In India, the enforcement of the Competition Act,2002, which provides Competition Commission of India with the help of the act it establishes a statutory body which provide guidelines with an object with:

1. To prevent anticompetitive practices
2. Promotion of competition in markets
3. Protection of consumer interests.
4. Liberalization that is freedom of trade

The CCI, operates as a statutory body which includes investigation, adjudication and advocacy functions. CCI have the power to initiate investigation, analyse market structure, impose fine for breach of law. Its adjudicative roles involve interpreting the Competition Act, hearing cases by aggrieved party and providing justice[9].

Leniency Programme

CCI's one of the notable features is Leniency Program which makes cartels members to disclose information about anti-competitive agreements for an exchange of reduced penalties. This program is considered as an effective tool in uncovering cartel activities in industries such as cement and pharmaceuticals.

Department of Justice Antitrust Division (DOJ):

The DOJ's mission is mostly centered on criminal prosecution of violations of antitrust legislation. That is why it has the exclusive right to bring cases of cartels, bid-rigging and other severe infringements. The criminal enforcement authority of the DOJ permits it to call very steep fines as well as imprisonment for those engaged in anti-competitive dealings. They put in place this strong mechanism to enhance deterrance factor against violation of the antitrust laws.The DOJ also performs a significant function in analyzing acquisitions and merger in business, focusing on those that may bring an unfavorable impact on competition. For example,

when DOJ was investigating the merger between AT&T and Time Warner it questioned vertical integration and its effect on consumer batter.

Federal Trade Commission (FTC):

FTC performs the function of civil enforcement and monitoring of the fulfillment of the antitrust laws on the part of the DOJ[10]. It examines unfair trade practices, scrutinizes merger, and works for the interest of consumers by its administrative and regulatory activities. Although unlike the DOJ the FTC does not possess criminal enforcement powers, more can fine organisations or individuals and also impose corrective measures.The FTC is also involved in responding to issues of concern in the digital markets. Its investigations of industries and companies such as Facebook and Google have also revealed the agency's objective of promoting competition in dynamic sectors. For instance, the FTC recently sued Facebook for antitrust where it sought to know whether Instagram and WhatsApp posed a competitive threat to the company. The system in the US is organized in a way that there are two institution for the competition law implementation, where the roles are divided and processed by both the DOJ and FTC[11]. Such a division of responsibilities not only minimizes chances of Conflict of Interest, but also increases effectiveness, and impartiality of enforcement. Also, both institutions can afford to use technology to obtain sophisticated resource and advice to cope with multinational companies and complicated markets structures.

Comparative Analysis of Institutional Mechanisms: India and the United States The systems of the establishments used in India and within the United States reflect their legal and economical scenarios. Whereas, The US has system of two institutions which have balance to each other, India's CCI functions as a centralized authority which has all types of functions in it. Well, one can see benefits of this united approach like no situations with tangled decision-making and bureaucracy.

As in other states, the US's antitrust enforcer of enforcement, the DOJ and the FTC, them often work together with state attorneys general and international regulators wherever competition violations bear cross border ramifications. The relationship of CCI with the sectoral regulators has been a relatively weak in India, resulting in jurisdictional issues as well as inefficiency in enforcement, for

example in dealing with the Telecom Regulatory Authority of India (TRAI)[12].

Emerging challenges in Digital Markets

Globalization of digital markets has been rapidly advancing over the two decades affecting various scopes of economies and reshaping competitive strategies and consumer behavior patterns. In contrast to previous industries, digital markets are different in their features, e.g. data-oriented business models, network externalities, or platforms. As one can see, these innovations have established efficiency along with comfort at a new level, but at the same time, work in the sphere of coordination of the antitrust regulators in the whole world became significantly more complicated. With respect to modern developed digital players like Google, Face book, Amazon, Apple and Apple it warrants to know if adequately-measured Indian outdated anti-competition laws can sufficiently address the issues being offered by these markets.

Market Control and Market Power

In digital economy, several leading industries can act as the agent between supplier of services and the consumers. These large companies are Amazon, Google, Facebook etc., which are in control of the user platforms for many markets and thus control some part of the regulation the industry has to adhere to. This is exacerbated by network effects which act as barriers to entry to the market through making a given platform more valuable as more people adopt the platform. Due to this, Google's search engine has over the years attracted controversy from across the globe including the Indian premised on its high market domination. The Competition Commission of India (CCI) has examined Google's abuse of Android as a next generation digital smart hub to favour its own applications and services to the detriment of competitors. The said practices go as far as constraints on the consumer sovereignty while at the same time, they establish high industry entry barriers. Likewise in Amazon case where Amazon acts as a marketplace operator and a seller itself there are risks of self-preferencing. As it obtains information from third-party sellers on the site, Amazon can favour its products over competitors creating imbalance in fair competition.

1. Data Monopolies and Consumer Privacy

Therefore, the question that regulators need to answer in order to mitigate power of data monopolies and misuse of consumer data is to reassess new data uses and relatively new approach to antitrust harms[13].

Some of these potential solutions include:

Data portability and interoperability: Among them are rules that regulators can adopt in a bid to lessen lock-in effect among digital players and they include ease the exportation of a user from one platform to other companies and vice versa. In addition, the integration of the platforms may have established some competitive pressure since users can easily communicate with services.

Concentration limits and market sharing:

The authorities can influence the consolidation only negatively, through limiting other mergers by the market leaders, or through enforced restructuring in cases of high consolidation. Further the combinations that envisage market division could be rendered illegal in a motive to eliminate actions of collusion as well as information sharing by dominant organizations. Subsidizing competition: Authorities can provide subsidies or otherwise subsidise the smaller competitors so that they could afford to invest into data collection and analysis and thus practically replace that market power which is used by the dominant firms.

Higher scrutiny on data-driven mergers:

It calls for the regulated making of comparison between what merger effects on consolidation of data and the resultant implication on competition. As an anti-discrimination measure for a merged entity, merger review should include a mandatory data audit and appraisal to close hypothetical gaps in the data.

In brief, the main topics concerning data monopolies and the predatory valuing of consumer data are some of the goals which the regulators need to achieve in their fight against monopolizations. Essentially, please consider that with the help of the enforced ones, as well as with the implementation ones, the false relationship with the customers will be stopped, and the digital market will be more competitive.

2. Algorithmic Collusion and Pricing

Algo trading in various electronic market places introduced condition wherein detecting and addressing the anti-competition

behavior became highly challenging. The current literature also proposes that it is actually possible for the more advanced computer algorithms to give rise to what is normally referred to as 'algorithmic collusion,' a situation where prices alter automatically without the actual companies having to interact physically. As there is no formal cooperation agreement or any documentation to support this kind of cooperation, it is almost impossible to document this kind of cooperation under the present antitrust laws.

For instance, real time pricing, which involves frequent changes in a product's price based on a set of factors such as price competition, consumer demand or other factors is common with Internet sellers. Customers could benefit from lower prices and the cost of production but there is agreeance that the idea of price fixing could affect competition. The parsing between proper algorithm application – which, similar to many regulators, would likely be very hard for a company to distinguish from the unlawful price-fixing activities.

3. Covenants and Exclusion and Foreclosure

In a bid to advantage over rivals, digital platforms often sign contractual relations with distributors, suppliers or service providers[14]. Despite this the method could be effective it also poses some risk of foreclosure by shutting rivals out from important markets of resources. For instance, the incorporation of Google's agreements with smartphone makers involving placing its applications on Android gadgets has been closely associated with the stiffness of competitiveness in the market. Further, current incidents such as problem of restraint of trade where traveling food delivery Apps such as Zomato and Swiggy are accused of having agreements with restaurants that they cannot be listed in other platforms. Such practices give rise to concerns with regard to the appropriate blend of innovation stimulation and fair competition.

4. Self-Preferencing and Vertical integration

Self-promotion is the act of giving preference to the platform's own goods or services rather than those of rivals. This problem is most acute in markets where digital platforms are both an intermediary and a competitor in the same value chain. For instance, various policies around the App Store are seen as specifically beneficial to Apple's own creations and able to charge a hefty commission fee to third-party applications. This has resulted in

investigations over antitrust by the European Union and the United States.

Conclusion

The principal objective of the proposed reforms is to modernize and prepare India's antitrust for digital market structures. This work will go on to suggest that the use of the separation of powers in assigning any investigative and adjudicative powers that can be done independently may eventually favor impartiality since incidences of compromise and bias in appraising the cases would be lesser depending on who is assigned to the case.

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Evolution of Abortion Laws in India With Respect to Unplanned Pregnancy

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Abstract

The evolution of Indian abortion laws trace them to this nexus between legal reforms, the beating of the reproductive rights drum, and socio-behavioural changes. This paper, in part, draws the development of abortion laws as (essentially) an issue of unplanned pregnancies and the legal implications thereof on the socio-legal environment. It beginnings with the pre-independence laws, which criminalized abortion, and progressed through major amendments and judicial interventions that increased the contours of safe abortion services. The paper also studies the modifications contained in the MTP Act, either in advance of medical science or in particular situations for extending gestational periods or otherwise granting reproductive autonomy to unmarried women. The Act was progressed but left some gaps it didn't fully cover. What are the challenges to abortion services that are available? Secondly, it is a challenge to see at abortion among women, those not mentioned in the Act, like the class of women exempted. This paper also focuses on the critical gaps in abortion law implementation across different politics, illegal abortion, the social stigma surrounding abortion, and inequality in the healthcare infrastructure, particularly in rural areas. It also reviews different judgments, such as the recent Supreme Court judgments, which have discussed reproductive rights as being part and parcel of personal liberty and gender equality. This paper also criticizes the implementation of existing laws and exposes the inconsistencies and barriers in which vulnerable adolescents and other marginalized communities live. This paper tries to place the legal framework for India within the international perspective while emphasizing the need to balance medical ethics, individual rights, and societal well-being.

Introduction

The Indian laws of abortion have changed a lot in the past times. They are aligning themselves to the shifting socio-cultural

landscape, progress in the area of health sciences, new-found concern for human rights. The MTP Act of 1971 is a social legislation of this country of great importance; otherwise, it imported specific colonial laws against abortion in IPC. The pregnancy (MTP) Act of 1971 is one the most vital and significant laws for this nation as it paved the way in banning the colonial and criminal provisions under the Indian Penal Code regarding abortion. Action of Pregnancy (MTP) Act of 1971 is a social legislation of this country of great importance, which otherwise had carried specific colonial laws against abortion as incorporated in the Indian Penal Code. Pregnancy (MTP) Act of 1971 is a landmark legislation in the history of this country that heralded the end of colonial-era restrictions and criminal provisions against abortion as incorporated under the Indian Penal Code. On the one hand, the Act was thought of with the desirably pregnant woman in mind, On the other hand, it was concerned with public health. But negative social behaviors, no healthcare facilities, and legal issues sometimes limit its functionality in countries for Childbearing unmarried women adolescents and rural regions. This critical concern in abortion law remains partly preserved as complex, and so does unplanned pregnancy in India. These pregnancies can be a result of the availability of means of birth control, low levels of sex education, or even rape, putting the woman in an obscene socio-economic and health status. On this aspect of abortion laws India has been struggling for over sixty years. The color of the provisions given at the time of enactment of the MTP Act, though in a way revolutionary, was very prescriptive and restrictive so in terms of the gestational ceiling and riddled with the discretion of certain categories of medical practitioners. This frequently meant that women with situations that were outside of these boundaries could not claim this right .

A few of these have been filled by adding in the MTP Act in the last years and a few judgments of the Supreme Court. For instance, the 2021 changes have extended the period within which abortion is allowed in some circumstances and introduced the rights of unmarried women to get abortions. It is very important for re-establishing reproductive autonomy so that there is no deviation from the laws put up by the international human rights in India. But it is for the same reasons that on the other hand, issues still exist up

to this coming year. Legal provisions also do not practice practical observance primarily because of stigmatized social norms of the population and unequal access to health care. In light of the effects of which abortion has on unintended pregnancies, this paper presents the pattern and shift of abortion laws in India. Through leading cases, legislative milestones, and critical works, it aims to find out the socio-legal factors that contributed to abortion. It also brings into focus the causes for the nonachievement of reproductive rights, such as illiteracy, inadequate preparation of doctors, and perceptions regarding abortion.

Historical Context

Before independence- abortion was regulated by Section 312 of the Indian Penal Code (IPC), 1860, which was colonial legislation. The law proscribed different offenses, thus legalizing abortion as one of them. This law translated the domination of the colonial authority on the decisions of women on reproduction. This code was the period's conservative ethic, which regarded abortion as a moral wrongdoing rather than a health concern. The provisions were set up under a patriarchal system of governance in assuming a female is required to be contained in their decisions regarding child-bearing. Abortion, like infanticide, was regarded as a violation of religious and social morals acceptable during this era. Women had no say in reproductive issues, abortions were clandestine in an unhealthy atmosphere, and had very high mortality.

Post-Independence- It became necessary to acknowledge reproductive rights since society began to embrace a progressive mindset . During the British colonial era. The law criminalized various offences making abortion one of them. The law reflected the control of the colonial administration over women's reproductive rights. This code reflected a conservative approach to morality, which treated abortion as a moral offense rather than a health issue. The provisions were established in a patriarchal set-up, believing that a woman needs to be controlled in their reproductive choices. Abortion was treated similarly to infanticide and was seen as an act against religious and social norms prevalent at the time. Women's agency in reproductive matters was not recognized, and abortions were often performed secretly in an unsafe environment which led to high mortality rates. With society moving towards a progressive mentality, there was a need to recognize reproductive rights. The

developed government of India set up the Shantilal Shah Committee for the consideration of abortion laws. The work of the committee involved making several recommendations on how issues of abortion can be liberalized and taken more as a health subject rather than an offense. The framework for the Medical Termination of Pregnancy Act of 1971 was laid ou from these recommendations.

Comparative Analysis of MTP Act 1971 and MTP Act 2021

The MTP Act 1971 was one of the oldest legal provisions created for the territory of the world under which abortion was possible. It was an attempt to minimize unsafe abortions, which was a prominent cause of maternal mortality at that time. Abortions were permissible only in four defined circumstances which were: there were risks to the woman's life or her physical/mental health, pregnancies that included rape or incest, or the baby being born with a severe abnormality, and the contraceptive pill for use only by married couples.

The Act provided for termination up to 20 weeks of gestation but on wholly different terms: It was noted that abortions up to twelve weeks required authorization of one doctor; between twelve- and twenty-weeks Abortions required authorization from at least two registered medical practitioners. That is, while such a progressive intent is commonly associated with the legislation, the 1971 Act is far from it. It was and still is a health-conscious step that did not recognize the question of the right to abortion and social /economic factors. Forcing that they could not support single women in case there was support for contraceptive failure was a result of the value system that was underlying the successful running of that society and the dominance of the female gender over the male gender. However, the MTP Amendment Act 2021 attempted to overcome all these loopholes by making provisions that were related to medical progress, the judicial court saying helms, and changes in social attitude. From all those, one was that the legal gestational limit for abortion is now raised from twenty weeks to twenty-four weeks, but only for special and specific classes of women, that is, rape or incest victims, minors, humanitarian or disaster categories, and so on. This acknowledges the fact that in real life, such a gestation may not be realized as such until later for such classes of women. In addition, the amendment in 2021 for the RIS involving foetal abnormalities has removed the gestation limit; therefore, it may be exercised at any

legal time with the consent of the Medical Board in the State. Though these are feasible and diverse to some extent, obtaining a Medical Board's clearance regarding the delay and access in rural and/or underserved areas may not be straightforward.

Unplanned/Unintended Pregnancy

A new concern that has come into the picture in India is unwanted pregnancy. It mainly occurs because of a lack of effective and reliable barrier methods of contraception, especially in developing or low-income settings. Some of the unwanted pregnancies also happen when all forms of contraception let down the married woman. More so, cases of rape and incest are on the rise, meaning that the situation is worse. The adolescent birth rate in India declined by 27 percent from 1990–1994 to 2015–2019; overall, the level of unmet need for contraceptive services decreased by 25 percent in the same period. Abortion inequality also increased by 23%, which previously reduced by 10% in the years 2000-2004 and increased by 37% in the year of 2015-2019. The percentage of unintended pregnancies that were aborted increased from 47 percent to 77 percent. From 2015 to 2019, an approximate average of 48,500,000 pregnancies occurred annually. Of these, approximately 21,500,000 pregnancies are unintended, and procedures of abortion terminate 16,600,000 . It is legal in India if the pregnancy is for social or economic reasons. This has resulted in a reduction of the overall rate of unwanted pregnancies, theoretically controlled by contraceptive measures, has increased abortions. This trend is a pointer towards the emergence of a new generation of social culture where abortion is recognized as a women's reproductive right. Nevertheless, incidence regarding unwanted pregnancy is still high, which implies there is a constant evolution of relationships and acceptance of the usage of live-in relationships. The Act gives the right to abortion to the married couple but not to the unmarried couple.

Economic Factors leading to abortion

For most women, the attitude of economic factors impacts their decisions reflecting pregnancy. To a woman with little money in the bank, the option of raising a child becomes such a huge fiasco. This applies to women living in low-income households where each day is a struggle. Who pays for all the costs of pregnancy, medical bills, bringing up children and educating them, and so many more?

They are too expensive for women, especially those still unmarried or those who don't have a partner or any family to support them. Women in informal employment or struggling to make ends meet are the worst affected. Little or no job security, poor maternity provisions, and insecurity of jobs make an unintended pregnancy even more expensive. Lacking money for prenatal care or for taking time off of work to have a baby, abortion is the only option. A lot of such women might consider abortion as the only viable way to maintain their financial stability. Economic dependency is another criterion that defines candidates' choice. The female participants who rely financially on their male companion or the family stated that they don't feel sufficient. This lack of financial independence means that most women are unable to make decisions regarding reproduction – especially when their partners aren't willing or prepared to raise a child. Lack of financial security coupled with poor control of fertility options has no other option than to compel many women into practicing abortion. The areas with very little development make birth control less accessible because of the cost of service, availability of transport to clinics to get the service, and shortage of medical personnel . This results in unwanted pregnancies, and when the question of abortion comes in, many women are left to make those choices with limited access to safe, legal procedures. Many women, therefore, seeking a way to end an unwanted pregnancy will use unsafe methods, which may endanger their lives. Financial insecurity and the prospect of raising a child become a daunting burden. This is especially true for women in low-income households where every day becomes a fight to survive. All the costs associated with pregnancy—medical expenses, childcare, education, and so much more—are too high among female, specially who are either unmarried or have no partner or family to support them.

Those most at risk are women with informal occupations or women with precarious earnings. Just as with job security and maternity benefits, the unpredictability of the finances is more amplified when an individual is pregnant. Without any ability to come up with fees for prenatal attendance and or paid leave to take care of the pregnancy, abortion is inevitable. Thanks to abortion, many women in such situations might be convinced that there is no other way out but to complete the interruption of pregnancy for the

sake of money. Criteria include the economic dependency as well when choosing a spouse. Women who financially rely on a man or on the family they believe that they are not free. This lack of financial independence strips women of their right on when to have children, or whether they are willing to actually raise a child. Lack of economic freedom as well as lack of control over reproductive health cannot but push many women towards the choice of having an abortion. The barriers include cost of service, transportation to clinics and lack of professionals to make birth control less accessible in the poorer regions right away. This results in unwanted pregnancies, and when abortion is factored in, a majority of the women are forced into a choice that has very little access to safe, legal procedures. The only solution that many women find for unwanted pregnancy is to 'abide' in unsafe abortion, at the peril of their own lives.

Live-in relationships and abortion

The nature of relationships in India has also been inclusive with considereing 'live-in relationships,' which further has put unnecessary complexities to abortion. If two people are cohabiting, the couple lives together without being married, there are social and legal consequences. Matters like an unplanned pregnancy are, therefore, difficult for such couples. So when such an unplanned pregnancy happens, then, coupled with stigma, stress may be worse for couples already living together. They might consider what people in their families, community, and or society would do to them for contracting to live together. In particular, such a stigma may help them refrain from searching for assistance. These women are not not given the same legal status or institutional support that married women receive; for instance, they cannot claim maternity benefits or child support from the man they are cohabiting with. In the case of live-in relationships, the harshness of economic pressure resembles more or less the condition of economically weaker families. The couple that cannot financially support themselves cannot support or feed a child. Thus, women in live-in relationships also lack legal rights as well as other social security facilities available at the time of marriage, and develop a feeling of having no other option but to abort the fetus.

Further, contraception or their ability to access contraception is something that women in these relationships might find difficult to

obtain either due to costs or simple lack of knowledge. It is important to appreciate that even with contraceptives, there can be a slip, and this will lead to pregnancies that were not intended. Since such women rarely earn enough to support a child and are unable to access an abortion easily, they are left with no choice but to abort.

Societal factors

Socio-cultural taboos about abortion and living together remain unfriendly to a large extent in India. Even though society's attitude toward cohabitation has been gradually evolving, in most cases, society will raise many eyebrows about any couple intending to live together without getting married. This tends to make it impossible for the couple to raise an issue about reproductive options or even seek assistance regarding an unwanted pregnancy. Some women who practice live-in relationships stated that a lack of social and family support makes isolation worse when bearing an unplanned pregnancy. Lacking any obvious or legitimate, these women feel entrapped – that is, they have to gestate not only the baby but also an ideal family model. Often, such a pregnancy is a disaster, and the only decision when all the alternatives are considered is an abortion . Likewise, women in unstable economic states often have to go into hiding. They cannot seek treatment and hold shame because social acceptance of abortion and premarital pregnancy is lacking. Without any support, these women engage in risky or even prohibited methods of exiting the pregnancy, thus exposing their health to danger . In live-in relationships, when there is no law to back the couple, women feel they are less powerful and less able to call the shots. If they aren't married or don't have the support of an institution, they might fall short of having money or the rights that come with marriage, meaning they can be left stranded should they find themselves pregnant. Abortions would then become a way through which these women escape economic and social experiences, and this has its drawbacks.

Suggestions

The present abortion laws of India need to be drastically changed to conform to the situation of the poor and underage women involved and couples living in the same house. Existing laws on reproductive right, medical abortion or following contraception already are too insufficient to protect ual active, unmarried women who elope and seek failure of contraception. The law regarding

reproductive rights of women must include unwanted pregnancies for extra marital consenting sexual relations to which rights unmarried women are entitled. This would mean that within the large legal guidelines and codecs, extra women would be secured by the regulation to have secure and authorized abortions as and when they wish to or want.

A lot of women can't afford pregnancy or raising children, they just can't afford it, and they simply outnumber their means. Risky methods are used instead of safe abortion when funds are restricted to allow the procedure. The government, therefore, should offer free or almost zero-cost abortion for work in groups within the BPO. Post abortion care and transport would be better covered under health programs and schemes like Ayushman Bharat if provision of costs arise from it.

Economic conditions can also be counted as another explicit valid reason for abortion; socio-economic factors should, therefore, be able to determine the existing legal provisions without asking women to hurdle through more obstructions.

Ironically, in most cases, a lack of birth control and adequate family planning are also widespread causes of unplanned pregnancies. Lack of access to contraceptives is only listed as being through public health programs, campaigns for youths, and those who are unmarried. In early-term pregnancies, the government could make medical abortion pills available legally and safely for women due to their effectiveness and cheapness but would ensure qualified pharmacists or doctors prescribe them. Telling the truth means removing social stigma because this factor puts women off and discourages them from seeking care. In regards to abortion, it is important to stress on the necessity for attending an abortion as a simple healthcare need and the rights of all women to voluntary motherhood irrespective of their marital and economic condition. Any service involving abortions must protect the privacy of clients with severe consequences for those who compromise the woman's privacy to make sure to provide access to women regarding the care they require. Aftercare training should, therefore, be introduced into the educational mainstream so that knowledge concerning the use of contraceptives, consent, and legal abortions is developed in Malaysia. The laws should change according to the diversity in modern-day relationships, like in life in relationships, same-sex

relations, etc; It would be conducive to extend the time legally for abortion for where and when due to socio-economic reasons a couple cannot raise that child. In this way, India may get the effective legal framework necessary for people and the changed society to inquire about the reproductive freedom of every man or woman within the country

Conclusion

The analysis of the changes to the legislation of abortion in India brings out the progress made in the recognition of reproductive rights as equal elements of the liberal person and the public health reform in the country. After the MTP Act of 1971 and the updated MTP Act of 2021, changes have started to emerge regarding the development of legal and safe abortion in India. Nevertheless, the law is still deemed ineffective in addressing the live socio-economic experiences of most women, especially those who are in live-in relationships, unmarried, or those who are economically disadvantaged. This is why the continuing high rates of unwanted pregnancies or pregnan-cies that were not planned because of lack of, or failure in, access to contraceptives or lack of reproductive health education cannot be rectified by legislation. More so, denying unmarried couples various aspects of the law continues to promote society's prejudices while also ignoring the different relationships' new forms in contemporary Indian society. Likewise, women and couples are forced to seek reproductive services that are staffed by quacks or in facilities that are not well-equipped because economic challenges make them seek safe, affordable, or feasible abortion services. Changes in abortion laws must also extend beyond attempts to liberalize limits on time and reasons for termination. They must consider social factors, including shaky economy, culture, and low literacy levels, complicating reproductive health matters. In this manner, the steps to include marginalized groups, to consider their needs, and to coordinate reproductive rights with socio-economic policies, could provide India with a pot of Humanitarian outlook to legal abortion. Finally, one wants to see people have adequate knowledge and choices about their reproductive decisions without pressure, prejudice, or force. The way out is in progressive legal amendments and efforts into public health alongside social reorientation that continues to regard abortion as a right and not as a luxury or taboo.

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Combatting Terrorism: Legal Frameworks and Challenges

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Abstract

The research paper, "Combatting Terrorism: Legal Frameworks and Challenges" aims to provide a 'framework' on international and domestic law that exists and seeks to combat terrorism and the challenges its enforcement faces. This paper will begin by explaining the international anti-terrorism legal instruments created by the United Nations, namely 19 relevant treaties and Security Council resolutions to the fight against terrorism and its impact worldwide. It will examine how these frameworks are utilized to facilitate the cooperation between countries, mutual legal assistance and enforcement over offenders. This paper will also tell more about the low uptake of these instruments and the discrepancy between ratification and implementation in certain countries, as well as illustrative examples of limiting factors such as absence of laws, low political will and funding to operationalise them. There will a debate of how terrorism laws have been adopted by various nations with special consideration to the most elaborated changes across the EU post Spt. 11 terrorist attacks and their influence upon nations involved within the baseball field influence. The study employs descriptive and analytical approach in carrying out research in order to identify the best practices, and formulate recommendation on how legal provisions could be strengthened to combat terrorism. In doing so this paper will hope to partake in the literature and practice of 'counter-terrorism' through the argument that a global solution to the end/transfer of such violence is possible which can hold equivalencies with regards to the practices of oppression and human rights liberations.

Keywords- Counter Terrorism, United Nations, Anti-Terrorism, Human Rights, 19 International Treaties.

Introduction

The terrorism in the different forms continues to be the biggest global issue of 21st century. It is 'borderless', "affects societies at all levels", and remains a lingering threat to national and global security. And terrorists continue to destabilize countries and destroy lives in whatever way they can, by way of largescale events, like the "September 11th terrorist attacks" in the 'United States' or smaller scale, more regional incidents. Response to organised threats of terrorist acts, the states 'international community' have developed legal regimes for "prevention, criminalization and punishment of terrorism".

The "growing threat of terrorist acts began", and "to that end, states and the international community devised a series of legal regimes geared toward preventing, punishing and enacting terrorism". Against this background, the paper will try to shed light on the reasons why these laws to combat terrorism exist today on the international and the national level, explaining successes and failures. We will examine how the UN constructed the international response to terrorism through treaties and Security Council resolutions. International devices that are at the core of the world framework to combat terrorism, instituting binding duties on diverse states and selling international cooperation. But their usage has nonetheless been contentious and onerous. At the national level countries have developed their own responses to terrorism — through comprehensive counter-terrorism legislation or ad hoc measures operating in times of crisis. Since 9/11, some countries, particularly in Europe, have built robust legal frameworks surrounding counter-terrorism, and corresponding counter-terrorism policies have been integrated into domestic law. The European Union (EU) has been in the vanguard, at least in this area, of already hardened counter-terrorism legislation – of common seizures that cross state boundaries and a threat which is in itself transnational. Not unlike at the international level, EU level and the rest of the world have their own challenges regarding political will, the legal scoop and the balance between security and civil liberties.[1]

Definition of Terrorism and Its Nature.

Terrorism is a complex and multifaceted concept, typically understood as the illegal use of violence, or the threat of violence, to promote fear, with the goal of achieving specific political,

ideological, or religious objectives. Although it is prevalent across the world in discussion, there is no universally agreed upon definition of terrorism: it is a concept often politicized, dependent on cultural, political and legal contexts. “Terrorism” is, in the words of the United Nations General Assembly, “criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes,” highlighting its impact on societal stability and security. Since terrorists do not have any materialistic aims that demand expansive resources their tendency is to hit what they feel is weak, civilians or infrastructure, again in order to strike fear without threat of retaliation and seek to intimidate, destabilize or provoke its enemy and cause disorder. The nature of this terrorism in modernity is global and facilitated through technology, the internet and transnational networks.

Importance of legal frameworks in combatting terrorism.

Legal frameworks are necessary to combat terrorism as they provide an enforceable basis for prevention, prosecution and international cooperation. They create solid definitions of terrorism, criminalize acts committed in furtherance and promote other measures, including freezing assets, extradition, and mutual legal assistance. Tools such as the 19 UN treaties and Security Council resolutions offer worldwide consistency so that nations can unite on bridging the digital divide. Counter terrorism: Legal regimes also strike balance between state security with human's right, ensure counter terrorism in a way that we respect human rights and rule of law. But their usefulness will be conditional on implementation, which needs political will, effective institutions, and adequate resources to address the increasingly potent threats comprehensively.

Research Methodology

The research adopts both descriptive and analytical approaches to provide a detail understanding of the legal frameworks combating terrorism. The **descriptive aspect** involves systematically detailing international treaties, particularly the 19 UN conventions on terrorism, and examining Security Council resolutions to establish the global legal foundation. The **analytical approach** evaluates the effectiveness of these frameworks, focusing on gaps between ratification and implementation, challenges like financial and political constraints, and human rights considerations. The study’s scope includes **international frameworks**, **regional**

responses (e.g., EU post-9/11), and **case studies** of specific countries to highlight best practices and contextual challenges, aiming to recommend enhanced legal mechanisms.

1.1. Research Design

This adopts a **qualitative approach**, combining **descriptive and analytical methods** to examine international and national legal frameworks against terrorism. The study begins with a review of United Nations treaties, Security Council resolutions, and regional instruments, analysing their role in promoting global cooperation and legal enforcement. A comparative approach is employed to evaluate how different countries, particularly within the European Union, have adapted their counter-terrorism laws post-9/11. Additionally, case studies highlight implementation challenges, such as gaps in legislation, lack of resources, and political constraints. The research also explores best practices and proposes strategies to strengthen global legal measures while balancing human rights concerns.[2]

1.2. Limitation

The primary limitation in combatting terrorism through legal frameworks lies in the disparity between international norms and national implementation. Despite widespread ratification of treaties, many nations face resource constraints, weak legal infrastructure, and insufficient political will, which hinder effective enforcement. Additionally, international cooperation is often obstructed by conflicting jurisdictions, mistrust among states, and geopolitical interests. Balancing security needs with fundamental freedoms remains a persistent challenge.

2. United Nations-International Legislative Measures Against Terrorism

The UN has an extensive legal system in place equipping its institutions to tackle terrorism in its particular forms along with the larger systems of terror that allow for these acts. At the heart of this push are the 19 international legal instruments—used for the prevention and suppression of terrorist acts and comprising conventions, protocols and amendments. These treaties in combination offer a legal basis for international cooperation, the criminalization of particular acts, and mutual assistance in combating terrorism.

3.1 Legal Instruments Specified by the United Nations to Combat Global Terrorism Along the Lines of the Tools

The UN has an impressive corpus of legal instruments about how to fight terrorism, and they go beyond individual acts of terrorism to the mechanisms that promote such acts. At the centre of this enterprise are the 19 international legal instruments – conventions, protocols and amendments – specifically dedicated to the prevention and suppression of terrorist acts. Taken together, these treaties form the basis for international cooperation, the criminalization of actions, and mutual assistance in the fight against terrorism.

However, the 19 apparatuses and their relative changes are truly worldwide and have injected the battling and obstruction of uncountable fear-based oppressor threats and have contributed fundamentally to battling and fixing cross-fringe terrorism and urging worldwide admonishing against battling and containing terrorism. There is a whole range of international treaties, such as the 1963 Tokyo Convention, and 1971 Montreal convention, in addition to other treaties from the international community that treats some acts including the unlawful seizure of an aircraft, violence on an aircraft and acts that jeopardize the safety of an aircraft, as crimes against international law for the purpose, among others, of protection of civil aviation. More recent frameworks, such as the 2010 Beijing Convention, built on these provisions and expanded the definition to include cyberattacks and the weaponization of the aircraft. The "1973 Convention on the Protection" of "Internationally Protected Persons" provides limited protections for the safety of diplomats and other officials, while the "1979 Hostage-Taking Convention" criminalizes the full range of abusive coercive detentions. At the same time, yes, you can establish, global regimes, which in principle should strengthen security, either the Convention "physical protection of nuclear material" (1980) or the "cutting-off or direction of illegal acts against safety" of maritime navigation, signed in 1988, but you tried to do you the same; you create-legitimate craft for the future, on land — nuclear materials, or aircraft — and airborne threats to maritime navigation and potential threat security. The international Convention on Terrorist Bombings, adopted in 1997 and the international "Convention on marking plastic explosives" of 1991, pertain to explosives, while the Convention, 1999, on the

"Suppression of the Financing of Terrorism" provides for "criminalizing terrorism financing & freezing wealth". Similarly, measures preventing and responding to nuclear threat were included in the "Nuclear Terrorism Convention 2005" as well.[3]

3.2 Main Pillars of Global Counter-terrorism

In the European context, there are also three intergovernmental organisations dealing with counter-terrorism issues, whose outputs are part of the overall universal framework for implementing counter-terrorism responses: namely, the Council of Europe, the European Union, and the Organization for Security and Cooperation in Europe (OSCE). [4]Three key components drive the international battle against terrorism: international cooperation, legal assistance and jurisdiction over offenders.

Treatment: Terrorism is transnational, and should be dealt with effectively through international cooperation It is that now, yes, it is that entire body of work - 19 treaties and Security Council resolutions, all produced through the United Nations - that are at work together to bring countries together in new ways. Such frame-works promote intelligence-sharing, joint operations, and cooperative action against terrorist networks. Differences in political will and capacity, however, often foil smooth cooperation. Mutual legal assistance mechanisms allow States to assist one another on cross-border evidence collection and execution, as well as Asset seizure and suspect Extradition. Whether you need bilateral and multilateral agreements or normative instruments like the UN Convention against Transnational Organized Crime, both bottom-up efforts and the top-down legal frameworks exist in these activities. They are crucial for smooth implementation, however they come with a lot of challenges including legal system conflict, lack of trust and high levels of bureaucracy.

The principle of jurisdiction over offenders guarantees the prosecution of terrorist actors, irrespective of offense location. For instance, the international community have agreed to abide by laws such as in treaties like the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, wherein the principle of universal jurisdiction not only as a means to exercise jurisdiction but also the burden of proof, rested on states in order to act against an offender to exercise jurisdiction but only in cases if there were no alternate

jurisdiction and if the relevant state decided to do so, that is, if such was deemed appropriate.

3.3. Bridging Gaps Between Global Frameworks and National Implementation

Countries need to prioritize harmonization of Domestic laws and with international treaties to address the mismatch between global legal frameworks and national implementation. The comprehensive anti-terrorism legislation that countries develop should align with the international conventions, including all 19 counter-terrorism treaties agreed by the UN. Capacity-building programs, which are supported by international organizations, can help countries lacking technical expertise or resources to draft and enforce such laws. In addition, strengthening domestic governance and reducing bureaucratic inefficiencies can help in better implementation of international commitments. Periodic peer reviews, for example, by the UN Counter-Terrorism Executive Directorate (CTED), can identify implementation gaps and provide tailored recommendations. Public and political awareness of the importance of these frameworks can also strengthen political will to adopt and enforce them.[5]

3.4. Challenges to the Effectiveness of Global Legal Frameworks

The difficulties of countering terrorism are not new, and have indeed a long history. The word "terrorism" was, in fact, first used to mean the Reign of Terror, the time of the French Revolution from Sept 5th, 1793 to July 27th, 1794 when the Revolutionary Government initiated violence and repressive measures against subjects thought to be "enemies of the Revolution".[6]

a. Low Rates of Ratification and Uptake

The low rate of ratification and uptake of international treaties and conventions one of the biggest issues under global anti-terrorism law. Although UN has come up with 19 basic treaties to tackle terrorism, most of them have not ratified them or have ratified symbolically on paper without implementing them in action. Political conditions, be they nationalistic concerns of sovereignty, ideological differences, or political opposition, hinder nations from full participation. For example, some states may be reluctant to ratify counter-terrorism treaties they feel have been shaped by Western security concerns or impinge on their domestic policy.

b. Disparities in Adoption Among Countries

Even where treaties are ratified, there are considerable differences amongst countries in their adoption and implementation of these frameworks. Robust Legal, Financial, Technical, and Institutional Capacity: Developed nations with good, enforceable, legal systems and resources will often be able to incorporate the global frameworks better than developing nations, who may suffer from essential financial, technical or institutional capacity to implement the global frameworks. The application of such measures is seen to be uneven, with the result being gaps that should be assiduously filled where terrorist groups can exploit less effective and thorough jurisdictions.

c. Lack of Proper Implementation of Treaties Ratified

Often ratified treaties go unimplemented because domestic implementing measures are lacking, or the appropriate law enforcement training has not been done, or there isn't the political will to move forward.

6. Eradicating Terrorism in One of the Biggest Regions of the World: A Comparative Study of Legal Responses at National Level

National systems of anti-terrorism differ from one another, and such measures are adopted and implemented for factors of political, social, economic and cultural nature. While international law instruments, particularly the 19 United Nations terrorism treaties and Security Council resolutions, lay the groundwork for cooperation at the international level, their uptake and implementation vary widely among states. There has been, in particular if only for the fact that the member states of the EU have to work out a coordinated response post September 11th, a harmonization of laws regarding security without losing track on fundamental rights to a certain extent. There are barriers to harnessing these global frameworks through lack of enabling legislation, inadequate resources, and limited political will across many developing countries. All the more when it relates to mutual legal assistance, enforcement of jurisdiction in counter-terrorism proceedings and general ensuring of the inclusion of human rights principles in counter-terrorism laws. The analysis illustrates that national strategies do not resolve all terrorist threats, and emphasizes the need for a naive global approach in order to make sure that the

national level strategies are effective and conform to international norms as well as international human rights and civil liberties standards.

6.1. Select Countries with Legal Action

Different states have come up with legal responses to terrorism according to the generation of threats that they face as well as taking advantage of its available resources and political circumstances. USA PATRIOT Act (2001) was passed in the United States to expand surveillance capabilities, enhance restrictions on financial institutions, and provide law enforcement with strengthened investigative tools to combat terrorism. Though it is said by the ones who oppose it to infringe upon grounds of civil liberty, it has been proven effective in combating terrorist activity. Similarly, India had its own UAPA, which gives broad powers to designate a group as a terrorist organization and to detain people without trial. By contrast, the enactments of Canada's Anti-Terrorism Act was premised on balance between security and human rights protections, indicating a more rights-based philosophy.

6.2. Transformations within the EU after 9/11

The European Union's counter-terrorism policies strengthened after September 11. The European Arrest Warrant (EAW) which facilitated the extradition process, and the EU Counter-Terrorism Strategy (2005) which put emphasis on prevention, protection, pursuit, and response. Improved intelligence-sharing structures, like Europol and Eurojust, promoted cooperation between member states. Yet implementation has proven challenging, and countries differ in their political will and resources. For example, France and the UK passed sweeping counter-terror laws expanding surveillance and detention powers. But that raised the ire of human rights groups, who complained of encroaching civil liberties. The EU's measures show the broad regional push toward consistent but adaptable responses to terrorism amid the struggle between security and rights.

7. Balancing Counter-Terrorism with HR (Human Rights)

All relevant measures taken by States to combat terrorism should respect human rights and the principle of the rule of law and must exclude any form of arbitrariness and any discriminatory or racist treatment, and such measures must be subject to effective oversight. [1] Governments have used anti-terrorism acts in specialized cases to destroy the opposition, to hunt down minorities

and even stifle political dissidents. For example, organizations including Human Rights Watch and Amnesty International catalog cases in which vague definitions of "terrorism" have been used to criminalize peaceful protests or curtail the rights of a free press. Mass detention without trial, torture, and citizen surveillance all adhere to common patterns under these laws. Such practices not only infringe on core liberties but may also sow resentment and radicalization that will undermine the attainment of broader counter-terrorism objectives for the long-haul. A rights-based approach to better global counter-terrorism must therefore embed human rights protections throughout. Counter-terrorism measures should be in accordance with international standards set forth in instruments such as the "Universal Declaration of Human Rights" and the International Covenant on "Civil and Political Rights". Oversight mechanisms must provide for independent judicial reviews and parliamentary checks. The international community must limit itself to preventive actions combating terrorism at its roots, addressing the inequalities and social grievances that often underlie it. Security measures should not only be effective, but also consider human dignity.

7.1. Focus on HR (Human Rights) Protections

The human rights implementation both in the moral and pragmatic sense must be a central component of a sound anti-terrorism effort. This is from such an approach which keeps issues like grievances which would potentially lead to radicalization to the least among the vulnerable population.

The UN Global Counter-Terrorism Strategy emphasizes the importance of upholding fundamental freedoms in the process of waging a war on terror, noting that actions in violation of human rights are often counterproductive, breeding resentment and undermining public trust in institutions. The security of the individual is a basic human right and, consequently, the protection of the individual is a primal duty of the Government. States thus have a responsibility to guarantee the human rights of their nationals and others by taking positive measures to protect them from the threat of terrorist acts, and to bring their perpetrators to justice.[7]

7.2. Alignment with International Norms

Counter-terrorism response measures must also respect the international human rights legal framework, including the (ICCPR)

that protects key freedoms such as: due process and protection from arbitrary detention. States must strike the right balance between national security considerations and international human rights obligations. Such reconciliation between priorities is typically informed by frameworks, such as the United Nations Special Rapporteur on the promotion and protection of human rights while countering terrorism. This brings the second point: A transparent process and an accountability mechanism through which any counter-terrorism action is consistent with universal benchmarks and thus lends international legitimacy. This type of congruence strengthens the rule of law and also responsibly frames international unity in the fight against terrorism.

8. Conclusion

Combating terrorism would demand a multi-faceted and collaborative approach combining the robust legal frameworks with international cooperation. The United Nations' global efforts, specifically through its 19 international treaties and key Security Council resolutions, provide a good basis for combating terrorism. These frameworks emphasize cooperation, mutual legal assistance, and jurisdictional clarity-all these are important in breaking the transnational terrorist networks. However, their effectiveness is significantly hampered by gaps in implementation, low rates of ratification, and a lack of resources and political will in many states.

National responses, such as those by European Union nations in the aftermath of 9/11, also hold lessons regarding how regional cooperation and legal evolution can bolster readiness and resilience to terrorism. But these responses are also often criticized as encroachments on civil liberties, highlighting the delicate balance between security and human rights. Moreover, the selective use of anti-terrorism legislation to stifle dissent or target minorities also weakens the legitimacy of such measures and risks creating further radicalization. This includes efforts to reinforce the fight against terrorism through a focalized approach to bolster capacity, the distribution of resources on equal terms and the harmonization of national laws with international standards. Its effective coherent operation will be achieved through an optimal global counter-terrorism strategy based on nurturing trust, enhancing accountability, and protecting fundamental freedoms.

9. Recommendations on Strengthening Legal Frameworks for Counter-terrorism

Implementation and Ratification of International Instruments One main point to ensure wider ratification and effective implementation of international treaties and resolutions of the UN. These instruments should be reflected by States in national legislation that is comprehensive and anti-terrorism in nature. In some countries, assistance can be offered in the form of legal expertise to allow national adoption of the applicable provisions, including through international organisations (for example UNODC).

Improvement of IC and MLA International Cooperation & Mutual Legal Assistance)

As terrorism is transnational by nature, adequate International Cooperation is crucial to counter it. We have a long and well-structured infrastructure for information sharing, evidence gathering, and joint investigations which could reduce hold-ups in (MLA). It is also crucial to bolster regional cooperation via EU or AU, which can provide localized solutions.

Addressing Financial and Capacity Constraints-

Many states don't have the capabilities to defeat terrorism. Potential donor countries and international organizations must allocate funds, training, and infrastructure to strengthen counter-terror capabilities among developing nations. More specific attention should be paid to putting in place mechanisms that read more to track the usage of fund to ensure accountability.

Striking a Balance Between Safety and HR (Human Rights)

Preventive human rights framework must be implemented in order to establish oversight mechanisms judicial review or independent commissions to ensure compliance and to prevent oppressive practices. All of this is just as necessary as mobilizing community-based, civil liberties-respecting counter-radicalization strategies. It functions towards bridging the gaps in normative, legal and institutional frameworks in contributory efforts to creating a global response to terrorism based on human rights.

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Live-in Relationships in Modern India: A Cultural Shift Amomg Youth and Its Impact on Marriage

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Abstract

The phenomena of live-in relationships are thereby leading to shifted culture in India through globalization, social reforms, and young people emphasis on freedom and compatibility. It assist lovers to share time and affection without the responsibilities inherent in marriage; this form of living together provides a real option to an old-fashioned courtship. Focusing on the metropolitan territory, the official opposite-to-popular views under the type of live-in relationships contradict the ethnical and religious values connected with marriage. In fact, such a system has its cultural roots as it finding practices dating back to as early as the Vedic period and some tribes. As for live-in relationships, India's legal law does not state and shield it but the constitution and other laws to some extent address the necessary ways like maintenance, property rights , and inheritance of women and children involved in the live-in relationships. The choice of the youth to engage in live-in relationships is a culture that is brought about by globalisation, communication technology advancement, pursuit of career and personal development. On the one hand, these trends are stated to erode marriage, as opposed to, on the other hand, supporters believe these options fortify marriage.Legal enunciation, separate sensitization, and counseling should be followed to close the gap between social approval and personal behavior. Arranging live in relationships could be complementary to conventional marriages and it can fit into the existing society structure in a more gracefully manner.

Key words: *Live-in relationships , Marriage, Vedic period , Youth , Globalization*

Introduction

Live-in relations are gradually becoming a sign social trend in India as a generation of youth consciously decide to live in relation

to enjoy their personnal freedom, compatibility. For lot of people living together is an emotionally uncommitted relationship is preferred since it reduces on factors like commitment, fears of divorce, or inter-religious etc Also, globalisation, social mediation, changing mind-set of relationships and break up of family structure leads the young people of the current generation to adapt live-in-relationships in place of marriage.[1] Despite the kind of stiff resistance in some quarters, live-in relationship remains as one of the best ways of having a companionship while pulling apart deeply rooted cultural and religious beliefs about marriage· However, there are always people who disagree with such an arrangement in one way or another, thus making live in relationships accessible and convenient way of cohabiting while at the same time upturning the cultural and religious beliefs with regards to marriage·.[2]

Historial Background

Live-in relations have risen from the Western culture.But beforehand itself in India from historical period itself there was relationships like in live-in togethere was existing.Instead of being a new form of trend from the social media, its roots in the history and cultural forms i which clearly indicates that these kinds of relationships in India have been been existed, during the Vedic period and even later, such relationships were there. Married men, that landlords, princes, or nawab, often had a mistress living with them besides their wives. These type of relations were acceptable, and children that were born out of these unions where and entitled to maintenance.

The sacred texts of ancient Hindu culture are relatively indifferent to such relationships. In the Gandharva Vivah which is among the eight types of marriage in Hindus, resembles the modern-day live-in relationships to a great extent. This form of marriage was a very valid one where two people lived together as man and wife without involving in blessings from family, friends or from the church[3]. The mythological stories also substantiate that society has recognized such particular relationships, such as the friendship of Lord Krishna and Radha.

The Oran tribes, the Ho tribes, and the Bishor Tribes also had a form of Live-In relationships. In these tribal societies, whenever a woman decides to get into her partner’s house and endures hardships, she is legally married to that man.[4]

Meaning of Live-In Relation

Live-in relationship is a form of cohabitation whereby two individuals are in a relationship experiment but are not lawfully wed.In this kind of relationship people are able to have the feel of couple life without having to face the responsibilities that come with marriage has lately gained popularity in metropolitan cities in India because of the freedom and independence.are seen as their chief concerns, especially for the youth.People prefer living together than getting married in order to avoid potential problems and proclaim that marital life may bring and to avoid any complications.Live-in relations are familiar in the Western countries and are present in India in different ways.The major purpose of the live-in relation is typically to see if the couple is compatible to get married.People form the rural areas continue to be conservative in their operation.

The Role of Dating in Live-In Relationships

Dating is very much connected with live-in relationships, especially with the youth, as it is the starting stage for a relationship. Usage of digital media for communication as a key element has made couples get closer and deeply understand each other. This trend is more common among the youth of the country in the urban era. Dating has thus become a mere avenue through which many relationships pave the way for them to move in together.

Types of Live-in Relationship

Dating cohabitation: When a couple is involved in a relationship and the only thing they think they need is to share the bills, the house and the company

Premarital cohabitation: In this type of live -in people who ever want to get married stay together as partners and, when they are ready that they will make good partners, come to the point of getting married. It enables two partners to have a chance to test their compatibility in a manner betrothed to marriage.

Trial marriage: This type of relationship is for couples who doubt marriage because of issues of their ethnic or religious dissimilarities, money matters, or reflecting on different personality traits. It allows couples to test whether or not marriage will work.

Substitute marriage: It is a long-term relationship where in both partners have no intention of getting time. The reasons for which may include; legal issue where one or both of the partners is legally

married to another person, or may just prefer to avoid going through the legal procedures.[5]

Reason Behind Live-In Relation

Live -in relation is becoming a common trend that is driven by various reasons based on one's personal values, lifestyles, priorities, etc. one of the main factors why couples opt for live-in before marriage is to test compatibility before getting married.As marriage is considered a lifelong commitment towards each other .For which they might have the feeling that there is a requirement in order to guarantee that there is an affectionate, cognitive, and functional connection beforehand and to acquaint themselves, duties and tasks that might come up.

In addition for some people marriage is seen an unnecessary commitment. As for these people, they do not believe that marriage is necessary and is not worth the approval of the law or society.This is the case with those individuals who are ready to sacrifice almost everything for their freedom. . Also the fear of divorce or broken marriage could be a reason for couples to opt for live-in relations.[6]

The social pressure is also a driving factor which leads couples to choose live-in relations as couples do face problems when it comes to religion, age, place,caste, job etc. Such couples will find that living together gives them the chance to reject all these problems that exist in the society and instead just follow what they want. As well, some people never get married because they do not want to be responsible for a family which entails being a provider, having kids, or being faithful in marriages. To them, cohabiting companionship without the pressure of getting married .

Career prioritization is a significant factor that influences couples to choose live-in relationship as people pay more attention to their own career as they are busy in there professional work and live-in together makes a convenient way to maintain one's relationship without compromising their work commitments. It allows them to focus on their career and also act as a relief to busy lives while enjoying intimacy and emotional support.

Marriage in India

Marriage is a covenant of love. Love is considered the cornerstone of a marriage. Marriage in India is bond between man and woman- legally, religiously, personally, and socially; it is bond between two individuals and their families; Marriage is one among

the major spiritual responsibilities that two individuals undertake to turn into a husband and a wife as per Indian culture. Currently, it has become evident in India that in marriage, it is not mandatory that marriage rituals are followed according to tradition. In India, there are two major types of marriage that is followed which is Arrange marriage & love marriage. Love marriages and arranged marriages are two cultural styles of marriages that depict traditional as well as neo-classical features. Mainly love marriages are equal to caste, community, and religion and people prefer their partner's choice rather than going by traditions. Sometimes they ignore factors such as material resources, or cultural norms and values in regard to the freedom of an individual choosing a partner. While Arranged marriages are based on culture and tradition they reflect parents' will and consent, and compatibility in the caste, religion, status, and even zodiac sign. Families and matchmakers are involved in choosing potential partners, therefore there will be common ground and common principles involved.

Indian culture accepts the concept of arranged marriage so though love marriages are increasing day by day arranged marriages are still practiced. The prepared identified that parents listen to their kids more and more, which shows that their attitudes have changed. Then then they are two forms of marriage existent depicts the emerging social structure of India which are conservative form and the emerging modernity on the other hand set the very notion of relationship and family in India in a certain manner.

Importance of Marriage

Marriage is a basic social institution play a vital role in the Indian context as it is a key institution for building individuals and society. It provides companionship, acceptance, opportunities to be selected, and even an opportunity to secure a spouse.It satisfies the remaining roots of human biologically designed affection and reproduction to obtain family lineage. In those cultures as the major aim of the marriage is reproduction. However these criterion does not get fulfilled while in liv-in relation.

Marriage law in India is one of the significant legal ideas. This puts similar ethical and legal responsibilities onto both the spouses as responsibility of ensuring support to one another, and responsibility of upbringing the children. Management and inheritance are some of the aspects of the common law that borders

on marriage laws as these obligation demonstrate the need for marriage as a formal identified cultural product that is brined with social impact.Marriage also has certain strict legal formalities such as formalization of marriage, publicity of marriage, etc.[7]

Religion & Marriage

Marriage in India is deeply rooted in its religious belifs, traditions and practices As India has diverse cultures and spiritual traditions across the country. In the case of religion in marriage, personal laws come into place along with Special Marriage Act, of 1954[8]. According to the religion marriage is not just legal bond but spiritual and divine institution.

In Hinduism marriage is a social sacrament which is also a blended of social contract. It holds a great religious importance, which is a transition to the Grihasthra Ashrama that is the fourth stage of life according to the Hindu shastras. A Hindu man is said to be not complete without a wife. It is regarded as being an indissoluble union , as only death can end the marriage for the people who enter into marriage. Procreation is the main element of marriage as practice, son is considered as pre-requisite to attain moksha which is a liberation from the birth -death-rebirth cycle.[9]

In Christianity, marriage is a sacrament that man shall fulfill in his life. Marriage is considered as the expression of love between men and women. It is there in the teachings from the Bible as marriage is said to be a divine union of two individuals who God had put together. It is divine institution that is of love, unity and mutual understanding of each other .[10]

Islam marriage is a contractual marriage. Marriage in Islam is not only a contract but also a backbone of social stigma . Marriage is a relationship which is based on mutual respect, love ,partnership with family consent. Islam prohibited relationships outside marriage as it only emphasises marriage is only an acceptable way for the formation of a family .[11]

Judicial Approach Towards Live-In Relationship

There is currently no law that regulates live-in relation in the judicial system. Even though though live-in relation has turned into a concerning topic of discussion of the nation it has not been legalized yet.There is a lack of clear legislation for live-in relation couples .The judiciary has assumed the role of defining the Rights of persons under a particular law. It has also been seen that live in

relationships is part of the right to personal liberty under Article 21 of the Constitution of India.[12] The Supreme Court, in case of *S.Khusboo vs Kanniammal& Anr*[13]it was held that the right to life and liberty, includes the liberty to cohabit without interference, is part of the right to life. This recognition can be taken as establishing the fact that the judiciary of this country has a liberal attitude towards the act of live-in relationships. There are also certain important judgments layed down by the indian judiciary that gives an outlook for live-in relationships in India. In the case *D.Velusamy vs D.Patchaiammal* [14]the Hon'ble Supreme Court of India laid down five primary essentials that deserve to be an identification of live-in relation. In the above said case, the Court has taken decision only for the protection of aggrieved woman even though the society has not approved the approach of Live-in relationship but the court has provided the above guidelines not to violate the Marriage Laws but to award maintenance to woman.

In *Kamla Sharma vs. Superintendent, Nari Niketan, Agra and others[15] case t* he Court said that a "man" and a "woman" could decide to live-in together without getting a marriage certificate as such practices are not unlawful, however, such may be deemed as unlawful considering the stand of the society. Likewise in case of *Abhijit Bhikaseth Auti vs. State of Maharashtra*[16],SC held that a woman in a live-in relation can apply for maintenance under Section 125 CrPC [17]without establishing marriage. The judgment in the case of *Ajay Kumar v. Lata Alias Shruti* [18]ncluded those women who are in a live-in relationship also and they have right to file complaints against their partners or relatives. Under Domestic Violence Act [19]As for the live-in relationships, the judiciary has come a long way but the legislature has left a lot of room for confusion.

Rights of Women & Children

Right to maintenance

As per Section 125 of CrPc[20], women who are in live-in relations can approach for maintenance from their partners. Proposed by the Malimath Committee of 2003,[21] this provision broadened the meaning of the term "wife" to encompass women who are in live-in relationships. In addition, the Domestic Violence Act 2005[22] provides shelter and maintenance to women in a relationship of cohabitation or nature similar to marriage.

Property Rights

The Hindu Succession Act of 1956[23] a long with the amendment of 2005 has been gender sensitive and recognises married women's rights to ancestral property. Married women in a live-in relation has the right to inheritance from their partners property as well as have control over any property they have individually bought or earned. But, so far as the property acquired during the live-in relationship is concerned it remains with the owner's discretion. This will make it possible for women in live-in relationships to have legal rights on issues to do with their inheritance and any property they earn or acquire on their own.

Children's rights in Inheritance

Children born in ive-in partners are accepted legally and have a claim over the parent's self-earned property as per Section 16 of the Hindu Marriage Act[24]. These rights have always been acknowledged by courts to protect the- interests of children who are born in such relationships. Section 125 of the CrPC[25] has provisions of maintenance for such children regardless of their personal laws and statutory provisions.

Children's Custody Rights

Live- in relationship always results in complications regarding the issue of child custody. The family courts in India will treats custody of children under live-in relationship on the similar lines as it would treat a case of marriage and rid itself of the ironing principle of being tiresome for settlement, preferring the welfare of the minor. These remain the over-arching consideration in all matters pertaining to custody to ensure the child gets proper care, physical, emotional and otherwise.

Cultural Shift Among Indian Youth

Looking at the aspect of culture, there have been significant transformation among the youths of India in the last few decades most apparent in the sub aspect of marriage. This change has however been occuring due to other reasons such as: Social cultural transformation which entails the shift to western kind of behaviour, personal preference. Earlier in their lifetime the Indian youth thought marriage to be inevitable, whereas many young Indians now does not consider marriage vital. Young people opt for status and singlehood, and select for similarity rather than pairing up in marriage.

Globalization and in particular media has been found to have altered the Indian youths in as much as the perception of one cultural norm or practice is concerned. Over and through various outlets like Instagram, trending movies, television and other source, the society has promoted and normalized live-in relationship, portrayed it as conventional, ship and stylish respectively. It has also lead to the increase in acceptance of cohabition as a form of marriage especially among the educated urban every families.

A breakdown of commitment issue is also a factor that has caused most of the youth opting for live in relations. This simply makes the youths keep away from marriage since they do not want to be divorced, and they do not have any money to support the marriage which is a huge responsibility, responsibilities like marriage and child care as they are afraid of long term commitments. It affords partners the opportunity to be accompanied and be involved sexually but do not compel you to wed as the law requires.

Effect on the Institution of Marriage

People continue to argue that the trends of live-in relationship are threatening the institution of marriage in India. While some people think that live-in relationships pose a threat to the institution of marriage others believe that live-in relationships and married relationship can go hand in hand.By exploring the cultural, religious, and social convictions that link people together as husband and wife, some people have the feeling that the practice of live-in relationships erodes the sacredness of marriage.

The conventional family is endangered of these exploitation of women because live-in relationships are based on personal freedom and choice instead of culture. But live in relationships and traditional marriage are not antonyms and could co-exist one below the other in a country like India as existing today. If both of these structural arrangements possible it is possible to explain it with phases of people's choosing and the flexibility of the Indian context for change. To highlight it, live-in relationships are not an undermining of the marriage, which is more an expansion of it.

Recommendations

To resolve the issues and rules of live-in relationships, India needs professional social, cultural and legal solutions. Firstly, legal perspective is important to address what is now a social issue that seeks to provide equal rights to the people who are in live in

relationships. Such arrangements must be defined clearly in legislation and should protect women and children and their rights, maintenance and property rights. The absence of legal or regulatory certainty increases uncertainties thus creates room for exploitation; therefore a clear legal framework would provide the legal remedies as the remedy for any aggrieved parties.

By educating the public through public relations campaigns are essential towards the achievement of acceptance. Thus, people should be educated regarding live-in relationships as legal decision people take for themselves and their partners. This type of relationship can influence younger generations positively once they discuss the different forms of relationships in schools and universities besides understanding cultural practices about the subject.

Enhancing family counseling services can also be helpful also helps to improve as well enhance the client's or patient's presenting problem. Counseling can act as a means to ensuring that family expectations and individual self choices are understood and appreciated. Marital counselling that targets couples in live in relationships can help then on what to do in instances of compatibility, loyalty and also how to manage conflicts hence fostering healthier relationships.

Conclusion

Live in relationships are also on the rise in India and so much more among the young generation as a way of getting company and respect without going for marriage. In-spite of these arrangements may not look standard, they, in fact, look insignificant being overhauled every now and then by a new generation expectations. But if there is legal recognition, education, cultural adoption and proper polices it is very much possible to live in relations along with the tradition marriage and make built the structure of the society of India and respect the constitution of India.

These alleged that these trends undermine the rates of marriage, while proponents argue that they are simply reinforcement options that enhance marriage.. Legal enunciation, separate sensitization, and counseling should be followed to close the gap between social approval and personal behavior. Arranging live in relationships could be complementary to conventional marriages and

it can fit into the existing society structure in a more gracefully manner.

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The Evolving Liability of Personal Guarantors under the Insolvency and Bankruptcy Code: A Judicial Analysis

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Abstract

The Insolvency and Bankruptcy Code (IBC), 2016[1] is revolutionary legal definition in the context of handling of insolvency and bankruptcy in India. Among its major novelties, one can mention the introduction of the use of personal sureties in the procedure for insolvency. The IBC framework provides for independent liability to personal guarantors who commit to repay a debt in the event of the debtor's default. The paper discusses focuses on examining amendments and judicial development regarding their legal standing in examining their duties.

The IBC develops a specific process through which the creditors can seek to recover the amounts from personal guarantors once a corporate debtor has discharged its liability. This independent liability has been consistently maintained in keen law decisions including *Lalit Kumar Jain v. Union of India*[2] and *SBI v. V. Ramakrishnan*[3]. These decisions demonstrate that the liability of a guarantor stems from the contract other than the contract backing the corporate debtor guarantee, and their discharge does not free the guarantor.

Despite these provisions, provisions that improve creditor confidence as well as recovery, they impose high risks of personal loss, potential attachment of personal property. Some people continue to believe by making such stringent provisions they may deter the general public from offering to act as guarantors in case of credit facilities which are very important to the running of many business ventures. The socio –economic considerations of this framework require that creditor rights be safeguarded within the context of guarantee arrangements that are fair to guarantors. The purpose in this paper is to study and analyse the legal state of the art and the judicial advancements, and the wider implications of the shifting liability of personal guarantors under the IBC.

Introduction

The Insolvency and Bankruptcy Code (IBC), 2016 reformed the legal provisions of bankruptcy in India and took a comprehensive, debtor-friendly, and timeline-based approach to insolvency situation. Among its important provisions is the provisions concerning personal guarantors who take the legal responsibility for repayment of the debts in case of insolvency of the corporate debtor. This innovation fills up the loopholes in the previous statutes like the Indian Contract Act, 1872[4] by which a guarantor was made liable as equally as the principal debtor but provided no remedy to the creditor in case of insolvency of the principal debtor.

Before the provisions under Part III of the IBC got notified in 2019[5], creditors could restrictively recover unpaid dues when CIRPs cleared the principal debtor's liabilities. Changes in the IBC and decisions of the judiciary have addressed this issue by allowing creditors to go after personal guarantors' separately. This double recovery mechanism supports the legal doctrine according to which a guarantor's responsibility, although linked by legal connection to the debtor's responsibilities, is nonetheless autonomous or personal by agreement.

The following sections show that judicial analyses have assumed a central role in defining the boundaries of guarantor risks. In *Lalit Kumar Jain v. Union of India*[6], the Supreme Court noted that the constitutional authority to proceed against personal guarantors under IBC and held that discharge of corporate debtor does not absolve guarantors.

In the same way, in *SBI v. V. Ramakrishnan*[7], the Court stated that moratorium provisions under Section 14 are confined to corporate debtors.

This shift in the liability structure is the twin challenge of establishing a strong creditor recovery regime while protecting personal guarantor rights. This paper discusses these dynamics while highlighting complexities of legal and policy changes to foster a just and effective insolvency regime.

Evolution of legal framework

Laws regulating the legal liability of personal guarantors under the Insolvency and Bankruptcy Code (IBC) has witnessed

dynamism due to Political Legislative changes and judicial pronouncements.

Pre-Amendment Landscape:

Prior to the 2019 notification personal guarantor was kept out of the direct purview of the IBC. Redress against guarantors were limited under the Indian Contract Act, 1872 that Section 128[8] bound the liability of a guarantor to be as circumscribed as that of the principal debtor. This arrangement nevertheless was silent in terms of how creditors may be protected should the CIRPs discharge the principal debtor's obligations. Implementing the law, creditors encounter difficulties in enforcing the debt from guarantors which led to high risk and inefficiencies.

Post-2019 Notification:

The moment shifted with the Central Government's notification on September 02, 2019, of incorporating the IBC to Part III sections 94-101 which applied Part III of this code to a personal guarantor of a commercial entity. This inclusion enabled creditors start processes to recover through insolvency of guarantors without regard to outcome of CIRP. As a matter of fact, processes could be launched during or after the CIRP, providing creditors with opportunities to regain the losses that stemmed from the corporal resolution strategies, where needed. The notification also eased the process by categorizing the NCLT as the forum to act like a judge in cases concerning personal guarantors, to have coherence on how the case will be judged.

This shift filled important deficiencies in the law concerning the creditor protections with an elaborate structure to recover from the guarantor the due amount. They also emphasized on the goals of the IBC as well as on how it seeks to optimize creditor recovery while idealizing systemic effectiveness. But as being helpful for its clients, it has at the same time placed guarantors in a vulnerable position to liabilities saying that it has become a cause of discussion between who it is fair and economical in implication.

Liability Regime under the IBC

The objective of this paper is to examine liability of personal guarantors under the IBC, 2016 and it is important to consider the fact that although personal guarantors are different legal entities from the corporate debtors, they are equally held accountable to the same level as the latter one. Although the co-extensive liability is

established by Section 128 of the Indian Contract Act, 1872 the IBC seeks to continue the guarantor's responsibility even after the discharge of the corporate debtor. The amendment in the IBC made through the 2019 notification to cover personal guarantors under Part III of the IBC (Sections 94-101) enlarged their exposure to insolvency litigations much further than they had ever been before.

The IBC also gave legal rights to the creditors to recover the amounts from the personal guarantors separately from the CIRP. Creditors can apply for a Section 94 or 95 order by a court which will give an automatic interim moratorium under Section 96. This means that creditors' recovery process is safeguarded regardless the termination of corporate debtor proceedings. The framework also enables actions against corporate and personal guarantors simultaneously which gives creditors a dual recovery mechanism.

Prominent judicial decision making has also supported this structure. For example, *in Lalit Kumar Jain v Agriculture Tools Factory, Kath*[9]. In the case of Union of India, the Supreme Court endorsed the guarantor obligations as independent and cleared that resolution plans do not relieve guarantors. Likewise, in *SBI v V Ramakrishnan & Ors*[10], it was held that IBC's stay provisions are available only to corporate debtors and guarantors remain vulnerable to proceedings.

While the framework strengthens creditor claims, it brings some apprehension in the sensitivity of negative covenants or guarantees as it threatens to strip guarantors' personal assets and discourages guaranteeing. Therefore, while addressing the liabilities, the question about how to provide fair protections that counter them, is still an important one.

Situation 1: The Pre-Initiation of Corporate Insolvency Resolution Process (CIRP) against the principal borrowers

A contract of guarantee is essentially a contract whereby a person stands guarantee for some other person and agrees to take responsibility should that other person fails to meet his commitment in the contract. Of the IBC provisions, a corporate guarantor can occur as a distinct 'corporate debtor' upon default without imparting CIRP on the principal borrower. By the course of this article a few Supreme Court decisions will be further explained to demonstrate the Code's recognition of the guarantors' autonomous responsibility.

New Perspective Towards Corporate Debtor Liability

According to Section 3(7) of the IBC, a "corporate person" is an entity which can have a "debt" as mentioned in Section 3(11). A debt includes a financial debt in addition to an operating debt that refers to obligations or liabilities in respect of claims under section 3(6). By the operation of Section 141, a corporate guarantee when invoked causes the corporate guarantor to become a corporate debtor. This classification is rather important because it allows a financial creditor to file an application under section 7 of the code against the corporate guarantor whether the principal borrower is insolvent.

Judicial Endorsement of Independent CIRP for Guarantors

In *Laxmi Pat Surana v. Union Bank of India (2021)*[11] In a recent ruling the Supreme Court has held that even if the corporate guarantor is not a corporate person under the IBC, he would become a corporate debtor once guarantee has been invoked. The Court nailed indicated that the liability arising from a guarantee is as broad as that of the principal debtor. Therefore, a financial creditor does not waive off his/her/her right to file for CIRP against the guarantor for the said outstanding debts for creditors to have chance on financial recuperation.

This was affirmed in *Ferro Alloys Corporation Ltd. v. Rural Electrification Corporation Ltd*[12], the NCLAT held that there is no requirement for the CIRP application against a principal borrower before it could be initiated against a corporate guarantor. The judgment gave the financial creditors an opportunity to discharge liabilities through guarantor specially incorporated company.

Pre-Insolvency Rights of Creditors

Creditors continue to have the capacity to sue guarantors upon the latter's guarantee even before the start of insolvency process against the former. This is provided under Section 128 of the Indian Contract Act, 1872. The rights of creditors to recover from guarantors continue to be absolute irrespective of subsequent diminution of claim through insolvency or bankruptcy mechanisms. These pre-insolvency rights assure that creditors can take legal action against guarantors without procedural relation to the insolvent's state.

Situation-II When CIRP of Principal Borrower is ongoing.

The IBC provided powers to initiate proceedings against personal guarantors of the debtor company alongside that the CIRP

of the principal borrower is still under process. In the main provisions of the Code, it is preserved a relative tolerance of simultaneous actions, paragraph 60(2): Such liability is independent and mutual with the corporate debtor[13]. Judicial precedents affirm creditor's power to commence insolvency proceedings against guarantors for recovery during the continuance of corporate rehabilitation mechanisms.

In *State Bank of India v. Anil Dhirajlal Ambani (2020)*[14] the NCLT stated that personal guarantors can be proceeded against regardless of the status of the credit establishments the issuance of a resolution plan for the corporate debtor. This decision establishes that insolvency applications for guarantors are not dependent on the occurrence of CIRP of the corporate debtor. While the Delhi High Court has put a hold on the order of the NCLT, on account of Section 128 of the Indian Contract Act, 1872, it does not alter the fact that the two parties bear concurrent and co-extensive risk and responsibility.

In the case of *Schweitzer Systemtek India Pvt. Ltd. v. Phoenix ARC Pvt. Ltd*[15] the NCLAT ruled that application for the corporate debtor's personal guarantee has to be filed before the same NCLT which has jurisdiction in dealing with the corporate insolvency resolution process. It also means efficiency of the proceedings and eliminates any confusion over jurisdiction SCC Online.

However, as held in *Dr. Vishnu Kumar Agarwal v. Kanu Goma*[16], the SC ruling in Piramal Enterprises Ltd., clarified that in the same CIRP process, the existence of multiple processes against the principal borrower and multiple guarantors, creditors cannot file claims for the same debt amount. The IBC permits same-claim processes, on the proviso that the associated resolution processes co-ordinate to avoid double recourse or replication.

These rulings assert that the IBC functioning continues to uphold creditor rights as well as procedural equities on the anvil. Concurrent proceedings rationalize the process of handling insolvency but rise controversies on how perpetrators exploit the system and the Doi-rightness that hear the cases grant.

Situation-III

During continuation of above mentioned CIRP against Corporate Guarantor.

During CIRP of a corporate guarantor under IBC, any creditor has the right to file a claim in the name of the IRP of the corporate guarantor even when the corporate guarantee was not enforced prior to the commencement of CIRP. In another case of *Export Import Bank of India v. Resolution Professional JEKPL Pvt. Ltd. (2018)*[17] opined that the guarantee may be invoked, or a demand notice may be served is not mandatory before filing the claim.

This claim should be made with reference to the position as at the date of commencement of the CIRP. The NCLAT affirmed that the claim can certainly be for matured and / or, unmatured debts under clause (6) of section 3 IBC. Whether or not the guarantor has defaulted does not come into play at this stage. It justifies creditors' rights' recognition in the context of CIRP and corresponds to the IBC's goals and objectives.

Situation-IV After approval of resolution plan of principal borrower

The rights of personal guarantors are not wiped out even after the corporate debtor has been granted a resolution plan under the Insolvency and Bankruptcy Code (IBC) 2016, Section 31. The Supreme Court in *Lalit Kumar Jain vs Union of India (2021)*[18] affirmed the constitutional validity of the notification of 2019 amending personal guarantors under the IBC. The Court held that the approval of a resolution plan does not result in the discharge of personal guarantors in relation to such other independent contracting obligations as constitute the contracts of guarantee. For the following, discharges under the applicable law such bankrupts or liquidation of corporate debtors the guarantors do not escape liabilities.

The above principle was affirmed in a case of *Gouri Shankar Jain v. The Punjab National Bank*[19] was used as a reference in the decision where the High Court observed that personal guarantors do not get discharged even if the corporate debtor has been undergoing liquidation. Likewise, in *Andhra Bank v. F. M. Hammerle Textile Ltd*[20]., to clear any doubt, the NCLAT upheld the fact that the creditors had the rights unaltered in the event their claims were not met in the resolution plan.

Going back to the decision made by the NCLAT in *Lalit Mishra v. Sharon Biomedicine Ltd*[21]. elaborated that under the case of a resolution plan for financial debt resolution, the creditors of a

company do not absolve the personal guarantors of their responsibility. The claim, if any, in collateral and securities provided by the corporate debtor may be discharged, the liability of a guarantor, however, remains. This decision meant that the IBC does not wish to favour personal guarantors to claim their dues for enforcing contractual rights.

It is clear from these decisions that they jointly hold that a personal guarantee is a separate contract and that the creditors have their remedies. This way, the proposed IBC framework guarantees the creditor's rights' protection without dismantling the fundamental principles of contract law while emphasizing the complete coincidence of the guarantor's liability with the scope of the corporate debtor's obligations.

Implications of Judicial Interpretations

These judicial rulings support the IBC's main creditor protection purpose by permitting insolvency measures against guarantors. But they signal problems for guarantors as well, as they are exposed to risks unrelated to the debtor's insolvency. It is on this basis that the current paper seeks to highlights the necessity of the delineation of roles and rights of guarantors in the ISRP to promote fairness for all the parties involved.

This legal approach enhances the legal rights of financial creditors and establishes proper legal remedies for defaults while at the same time requiring further contractual protection for guarantors. It reestablishes the fact that insolvency resolution is not a mere issue of the recovery of money but an attempt to organize the debts in a manner that will restore systemic stability of financial systems.

Challenges Faced by Personal Guarantors

The changing framework exercises strong pressure on the personal guarantors. As for being effective in creditor protections, this weakens guarantors' financial security by allowing creditors to take, for example, personal property away from a guarantor. The two structures of corporate and personal guarantors under the IBC have created an issue of the possibility of receiving more than the amount owed.

However, where the rights of subrogation where the guarantor takes the place of the creditor after performing the obligations complicate the undertaking. This lack of clarity within the legal structure poses a potentially discouraging prospect to those willing

to act as guarantors – which may have implications for business financing.

Socio-Economic Implications

The treatment given to personal guarantors has far reached economic and social implications. Although the framework thereby exercises a positive impact on the creditors' confidence as well as tasking a mandatory financial discipline among debtors; it will on the other hand dampen the spirit of business advancement by discouraging individuals from offering guarantees.

At the same time, the provisions of the IBC facilitate protection of creditors' interest and prevent reckless credit risk taking. Thus, guarantors are also able to be held accountable by the framework to meet their financial responsibilities and sustain the stability of the market.

Recommendations

Unlike FIR, analysing the liability structure for personal guarantors under the IBC gives a bleaker picture, where despite adequate protection for creditors, guarantors face inordinate burdens that should be appropriately addressed. Here are specific recommendations:

1. Legislative Reforms

There is the need to clarify the finer details of subrogation rights in respect to the legal position offered to guarantors following performance of guaranty obligations. This would enable guarantors to be paid back any monies expended from corporate debtors or any other legal culpable parties. Presently, lack of legal leads on this right effectively compromises the place of guarantors in a project, or rather, would-be guarantors may end up being discouraged from participation.

Furthermore, the adoption of proportional measures of liability may hamper overloading of guarantors. For instance, statutory ceilings or graduated responsibility measures depending on capacity of guarantors would prevent unfair Striping of disproportionate personal assets.

2. A wonderful observation in the current settings is that several warranties offer judicial oversight and procedural safeguards.

Guarantors, however, are vulnerable to frustrations because there are few procedural protections. Supplementing the right to be heard of the guarantor as a party to the insolvency proceedings

would result into natural justice. The judiciary could have a very significant role to play if it insisted on guarantors being given adequate notice or an opportunity to oppose to the claims being made by the adjudicating authority must. It can also lower arbitrary liability that may result from vague assessments of claims by resolution professionals.

3. It would also ensure that the organisation had taken considerable precautions that resulted in the achievement of the set objectives of financial awareness and risk mitigation.

Organizations should establish programs, which will come up with information on the financial and legal consequences involved in providing guarantees for potential guarantor recipients. The ability to eliminate or reduce uninformed decisions allows enhanced awareness to reduce future conflict. For instance, extending the regulation to demand the compulsory disclosure before providing guarantee contracts may help eliminate reliance on personal guarantees to a considerable extent.

4. Balanced Creditor Rights

To avoid this, tighter measures of regulation require guarantors to be recovered only for the remaining unpaid amounts after the corporate debtor.

Conclusion

The following discussions show how liability of personal guarantors under the IBC represents a shift in India's insolvency regime and how it adopts to protect the rights of guarantors while critically protecting creditors' rights. This progression has been taken with creditor led approach that prepares for creditor's recoveries even when corporate debtors go for resolution or liquidation. The judiciary has equally been central in support of these principles, especially in their observation of guarantor obligations arising from different contracts as the principal Debtors' contracts as captured from cases such as *Lalit Kumar Jain v. Union of India*[22] and *SBI v. V. Ramakrishnan*[23].

But even with this framework in place, there are a few issues to face. The cut measures subject personal guarantors – which are usually a director or promoter – to high financial risks, with personal assets at stake. These liabilities may discourage people from becoming guarantors, having a potentially adverse effect in businesses' abilities to borrow money. In addition, more confusion

arises from the high level of sophistication concerning the subrogation rights for those guarantors who discharge their obligations.

Meeting these two objectives present a challenge given competing interests which can only be addressed through specific reforms. First, basic legislative changes to provide a clearer allocation of duties and rights of personal guarantors are necessary. This is because extending clear subrogation rights can enable the guarantors to gravitate debts form corporate debtors which can be a fair system. Second, due to the gatekeeping role of courts judicial oversight should uphold the principles of procedural fairness more so in handling of application for admission of insolvency. Third, increasing people's knowledge and understanding of the problems of guaranteed contracts could prevent them from taking on such responsibilities in the first place Since a company's credit score can affect its prospects for receiving collaborative credit guarantees.

As the previously discussed features of the IBC framework suggest, the reforms introduced by the new law go beyond the sphere of insolvency regulation and seriously affect the India economy, on the one hand, maintaining financial discipline among the country's businesses, and, on the other hand, protecting the rights of creditors. But, creating an enabling environment for entelechy and investment requires striking the right a balance. Consequently, achieving this equilibrium, as legal interpretations and legislative amendments progress form the IBC will be paramount. That is why the insolvency framework depends primarily on the protection of the rights of all the stakeholders: the creditors, the debtors, and guarantors as well as having the focus on enhancing the credibility and accountability of the Indian financial system.

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The Influence of Historical Maritime Laws on the Modern Environmental Regulations Under MARPOL Convention

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Abstract

This paper discusses the past and current legal structures for protecting marine environment in relation to MARPOL convention. Ship based Maritime pollution is one of the utmost environmental issues that have received much attention in regulations for many years. The specific foundation of the book is described step by step. The discussion also demonstrates that even more event, for instance, the Torrey Canyon oil spill in 1967, resulted in maritime regulations that are the norm in most countries today.

MARPOL was adopted in 1973 and further amended by some protocols, it has become one of the significant conventions useful means of preventing marine pollution including oil, deleterious matter, bilge and sewage, and air pollution. The paper also expands on the structural framework of the convention: it includes several technical annexes each of them is aimed at different types of pollutants and sets high levels of emission and discharge. The issues of enforcement and compliance are also revealed in the context of the analysis of MARPOL since there are differences for different regions management and absence of suitable reception facilities for ports necessary for effective discharge of wastes. In addition, the review builds on the new issues and challenges, primarily the invasion of species by means of ballast water, and the new problem of electronic and plastics waste from ships.

The study shows that despite MARPOL and related conventions' efforts, there still exist problems with arising and existing maritime pollution, such as formulation of new technologies employed on ships, seafarers' education and training, as well as efficient measures for enforcement of the mentioned conventions.

The analysis also underscores the value of inclusive cooperation, regulatory system flexibility, and an understanding of the many interrelated factors influencing sea activities and the marine environment. In conclusion, this analysis presents important findings on the growth of maritime environmental law, with MARPOL playing a central role in the establishment of modern pollution control mechanisms for ships and guiding future efforts to combat the environmental challenges posed by shipping.

Keywords – MARPOL, environmental, maritime, pollution.

Introduction:

The Beginnings of Maritime Pollution Law

During the 1950s era when people started noticing a rise, in sea pollution due to the increasing oil transportation activities a significant step was taken in 1954 with the formation of the International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL). This convention focused on restricting the discharge of oil by ships into the ocean as concerns grew about the impact of oil spills, on ecosystems.

However, as the shipping industry expanded in size and scope, over time so did the dimensions of oil tankers leading to a realization that OILPOL alone was insufficient to address the concerns at hand. The turning point arrived in 1967 with the Torrey Canyon oil spill disaster where an overwhelming 119000 tons of oil spilled into the English Channel causing significant damage, to marine life and coastal areas.[1] This tragic event highlighted the inadequacy of existing regulations prompting organizations the IMO to advocate for more strict and efficient measures aimed at safeguarding our oceans against pollution. This unfortunate incident became a moment, in initiatives to protect marine ecosystems from the dangers of oil spills and prepared the way for stricter regulations, in the subsequent years.[2]

Purpose and Scope of This Paper

This research paper examines the evolution of laws concerning pollution over time. Highlights the significant impact of MARPOL, on setting environmental regulations worldwide. The study delves into the structure of MARPOL including its annexes and the obstacles it encounters in enforcement to provide perspectives on how effective the convention's where enhancements could be made.[3] It also discusses how maritime laws have

progressed in dealing with concerns like plastic waste and air pollution to emphasize the necessity for MARPOLs flexibility, in addressing upcoming challenges. This study aims to improve comprehension of the effects of MARPOL and the ongoing requirement, for increased cooperation, in managing pollution.[4]

Historical Background and Development of Maritime Pollution Laws

From OILPOL to MARPOL

Early regulations, on pollution in waters were quite narrow initially when the International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL) established in 1954 was primarily concerned with minimizing oil discharges. The scope was widened later due to the expansion of the shipping industry and incidents such as the 1967 Torrey Canyon disaster that saw a spill of over 119000 tons of oil into the English Channel. This highlighted the shortcomings of OILPOL.[5] Led to an increased call for a more comprehensive strategy, against maritime pollution.

Experts concur that the unfortunate incident and other similar environmental disasters revealed flaws, in regulations and made way for the establishment of MARPOL as detailed in Griffin's study on MARPOLs inception and development.[6] In response to the 1978 Amoco Cadiz oil spill near Frances shores the IMO reevaluated its strategies resulting in the adoption of MARPOL in 1973 followed by its protocol in 1978, referred to, as MARPOL 73/78.[7]

MARPOL was groundbreaking because it contained six annexes dealing with different pollutants; oil (Annex I), noxious liquids (Annex II), harmful substances (Annex III), sewage (Annex IV), garbage (Annex V and air pollution (Annex VI). This structure was a significant improvement on OILPOL's singular focus on the issue, providing a more complicated structure that could better address multiple environment threats from the shipping sector.[8]

MARPOL's Annexes and Objectives

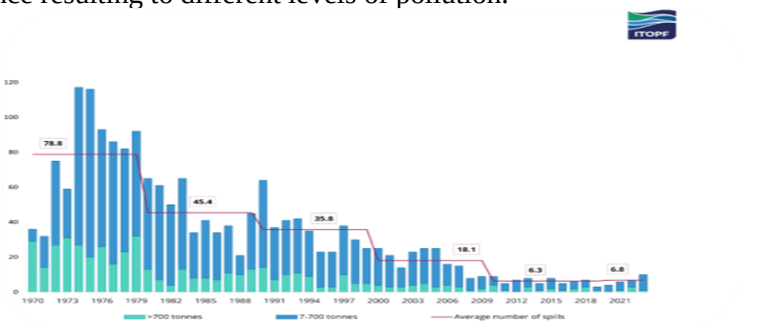
MARPOL's structure engulfs every aspect of the profile of a ship and has been adopted in most of the nation's makes its impact on maritime law profound. This shows that the convention has been accepted on the international level and is still effective; at the present moment it is used in more than 98% of international shipping tonnage. In the opinion of Dąbrowska et al., the MARPOL annexes have evolved in response to the new challenges to the marine

environment, for example plastic waste.[9] Every annex focuses on a particular pollutant in order to maintain the efficiency of MARPOL in relation to different issues of the environment. In addition, MARPOL currently has an Annex VI to control air pollution in ships as a new problem relating to climate change and emissions from ships arise.[10] According to Sheehy, the very design of MARPOL, which encompasses several types of pollutants, is a valuable framework for the protection of maritime environment.[11] This development in the maritime law further proves that MARPOL remains a vital, flexible and multilateral instrument in the continued fight against ship-caused pollution in the world.

MARPOL's Annexes and Their Impact:

Annex I (Oil Pollution): Annex I deals with oil pollution through the provision of double hulls for tankers and firm records on oil transfers. The surveys show that oil spills caused by ships have declined by more than 75% since the 1980s and this decline is attributed to these measures and constant monitoring for compliance.[12] Port state controls have been effective measures and enabled a country to inspect other vessels and ensure compliance with the MARPOL certification and thus reduced occurrence and impact of oil pollution.[13]

Annex V (Garbage Pollution): Marine garbage disposal is discussed in Annex V, with a focus on plastic waste that is incredibly dangerous for marine organisms. Despite the global prohibition of most forms of garbage disposal at sea, around 636,000 tonnes of waste is dumped into the sea every year as a result of differing compliance levels across the globe.[14] While the developed countries make sure that they have very strong garbage management policies, many developing areas lack the capacity to implement these plans hence resulting to different levels of pollution.[15]



Annex VI (Air Pollution): MARPOL was extended to Air pollution in 2005 by Annex VI and Emission Control Areas (ECAs) on sulphur and nitrogen oxides were introduced. Since the formation of the ECAs, sulphur emissions in these regions have reduced by about 30% with enforcement from the EU.[16] This shows that MARPOL is capable of responding to environmental issues other than conventional sea polluters.[17]

Challenges in MARPOL Compliance and Implementation:

Implementation Challenges

The lack of standard implementation and the problem of a weak legal basis for enforcement are some of the primary problems of MARPOL implementation, which can be attributed to the regional differences in the resources available for port investigations. Mantoju also pointed out that while 75% of vessels in certain areas are not subjected to routine surveys, this situation is due to the fact that port states have a lack of resources that limit their ability to conduct more comprehensive surveillance. Due to this limited enforcement, there has been high degrees of noncompliance, especially in the developing nations where poor compliance erodes the environmental gains that MARPOL seeks to offer.[18] The consequence is the varying levels of MARPOL's compliance all over the world, as some regions are unable to guarantee that visiting ships adhere to the corresponding norms. Sheehy identifies those Caribbean countries that have relatively low levels of port state resources that continue to struggle to implement MARPOL, thus weakening the impact of the convention in combating shipborne pollution.[19]

Fragmentation in Regulations:

As will be discussed further in this paper, MARPOL's enforcement is a challenge due to a complex structure of the international maritime law that consists of several conventions that have contradictory provisions. For instance, the Cartagena Convention in the Caribbean region uses MARPOL to set pollution regulations but also brings out extra environmental practices which at times contradict MARPOL.[20] At times, these two sets of standards may be aligned, however they may also be in conflict and the former may lead to contradictory enforcement practices among the port states. In the EU, MARPOLs waste facility provisions are aligned to the EU specific waste legislation which makes the legal regime a

rather convoluted one for the ship manoeuvring through the local and global requirements of MARPOL. That said, this integration has helped to enhance the enforcement of MARPOL within the EU ports and at the same time it brings additional layers of complexities since the ship operators are faced with a number of regulatory regimes which they have to meet.[21]

Non-compliance Examples:

Failure to observe the MARPOL standards is most rife in the open sea regions owing to inadequate surveillance and compliance checks. For instance, Khan et al. write that it is difficult for the member countries such as Vietnam to effectively implement the requirements set by MARPOL's Annex V that prohibit the disposal of garbage in the sea.[22] Because surveillance is not well-developed in these areas and budget is a constraint, non-compliance occurs more often in these areas and particularly with plastic waste that can have long-term implications on marine life.[23] As Dąbrowska et al. point out, the problem of illegal dumping has not disappeared and actually continues to be a significant problem where there is weak oversight and inspection to reign in violators.[24] This is true according to Mantoju's study; thus, the call for increased penalties and strong international support structures to curb such high-seas violations effectively.[25]

The Impact of Limited Resources:

The lack of adequate resources to enforce compliance is compounded by the fact that the costs of sustaining waste management facilities and monitoring technologies are very high. Many developing countries have challenge in financing the necessary port state controls and reception facilities needed in handling waste and monitoring emissions under MARPOL. According to Djadjiev, this financial constraint prevents the full MARPOL implementation because a lack of funding leads to fewer inspections and less rigorous compliance with waste reception and disposal requirements, thus limiting the efficiency of MARPOL in those areas.[26]

Environmental and Societal Impact of MARPOL

Reduction in Marine Pollution:

MARPOL has itself made a big contribution as an instrument in the fight against marine pollution especially in the regulation of oil contamination from ships. As it is seen, the number of major oil

spills has reduced sharply after the adoption of MARPOL convention. Djadjev, too, observes that before MARPOL came into force, there were an average of 25 major oil spills per year, a figure which reduced to less than five when the provisions of MARPOL were implemented, further proving the success of MARPOL's oil pollution prevention measures[27]. This has been mainly due to MARPOL's Annex I that calls for construction of tankers with double hulled and proper documentation of oil transfers to minimize spillage during operations.[28] These regulations have resulted in significant improvement of the environment especially in the marine environment and coastal communities whose major economic activity is fishing and tourism.[29]

Advocacy and Public Awareness:

The knowledge aspect has been relevant in the implementation of MARPOL measures in the years on end. The concern started with accidents like that of the Exxon Valdez oil spill age in 1989. The growing pressure from the public for higher levels of maritime environmental standards. According to Griffin these incidents led to the governments and maritime bodies increasing compliance measures to MARPOL, such that amendment and rigid rules were passed under MARPOL (International Convention for the Prevention of Pollution from Ships) regulations.[30] Dąbrowska et al. continue the idea that the increase in advocacy of the protection of the environment has also impacted policies on waste management, with regards to plastics, which remain a problem despite the limitations on garbage disposal provided in the Annex V.[31] MARPOL has continued to evolve and has had its environmental objectives strengthened by public pressure for marine conservation.

Recent Legal Developments and Future Directions:

Technological Advances in Compliance Monitoring

New technologies in the last few decades have enhanced MARPOL compliance monitoring, especially through the use of tracking as well as reporting tools. The 2023 review of legal matters concerning the seas reveals that through eBLs, automating the reporting means, satellite tracking, and monitoring are other ways through which the port authorities can monitor case compliance in real-time as compared to the conventional manual paperwork.[32] Djadjev also points out that these tools simplify paperwork, and

increase clarity in the disposal of wastes, thus minimizing fraud and allowing the authorities to easily pick out cases that violate the law.[33] This technological change is most suitable for areas with a high traffic flow since it may be difficult to conduct physical inspection in these regions. New advanced electronic tracking systems are also being implemented in many of the large ports to aid port authorities in the MARPOL compliance enforcement.[34]

Waste Management and Circular Economy Initiatives:

The latest circular economy legislation in the European Union is in complete synergy with MARPOL's goals under Annex V concerning the disposal of garbage on ships. The EU's initiatives are directed at decreasing the number of marine debris with the help of recycling and reusing waste as much as possible. According to Dąbrowska et al., utilising the circular economy concept in waste management can help to reduce the plastic waste and other pollutants that are some of the biggest hazards to marine life.[35] Further, Argüello claims that Directive (EU) 2019/883 requires all EU ports to ensure adequate waste reception facilities that assist ships in MARPOL waste disposal.[36] In fact, by enhancing the ports' facilities, the EU not only contributes to the objectives of MARPOL convention but also a positive example of how the regional cooperation can strengthen the international environmental treaty.

Future Regulatory Needs for Emerging Pollutants:

As science advances so does the recognition of new threats to marine life from such things as microplastics and chemical additives found in cleaning products and paint. The authors of the study by Dąbrowska and colleagues noted a lack of MARPOL regulation to combat these pollutants and called for new regulations to be developed to address new forms of pollution.[37] The rise in pollution has been made worse by the COVID. 19 Pandemic with items such as PPE and other plastic health items ending up in the ocean waters, more visibly now. According to Djadjev, MARPOL's regulations call for update to include types of waste in Annex V, and set modern standards to make sure that waste management practices are up to date to meet the challenge of protecting environment.[38]

Adaptation to Climate Change and Air Quality Regulations:

The change of MARPOL to deal with air pollution through the Annex VIs regulation on sulphur and nitrogen oxide emissions is an example of the growth of this convention in combating climate

change.[39] However, more adaptation is required as global climate problems persist to worsen. The 2023 review on legal issues states that MARPOL should enhance the measures against air pollution by enlarging the Emission Control Areas and by referring to the regulation of greenhouse gas emissions.[40] From Djadjev's point of view, the application of regulations on carbon emission under the MARPOL could be a way to bring the conventions goal in line with climate especially given the large carbon output of the shipping industry as stated in "Comply with MARPOL 73/78".[41] Expanding the MARPOLs coverage in order to deal with climate change issues would make it possible for it to contribute to, global environmental standards.

Due to these changes in law and advancement in technology compliance with MARPOL has been. New environmental issues require the change in its structure. Further measures, including expansion of waste rules and the climate change chapter, may be more valuable for MARPOL as a tool because the shipping industry is still experiencing new environmental challenges.[42]

Conclusion:

Historical Significance of MARPOL

The MARPOL framework has set a standard of fighting pollution from ships through pollutants, including oil spillage and hazardous chemicals, air emissions, and waste disposal at sea ports across the world which has revolutionized environmental compliance practice in the maritime business. According to Griffin, MARPOL's biggest roles have been underlined by the paper as playing significant roles in the regulation of oil discharges under Annex I, which stipulates double-hull tankers and strict operational measures.[43] Such rules have greatly reduced large oil slicks, protected the long-term adverse effects on ecosystems and safeguarded marine life forms. MARPOL also affects other aspects of sustainable shipping practices as Djadjev points out that the regulation has challenged the maritime industry to look for new ways of meeting strict pollution control measures. These regulations have greatly reduced the occurrence of disastrous oil spills, eliminated any long-term environmental impacts and protected the seas. To expanding MARPOL's effects on sustainable maritime practices, Djadjev's underlines the way this convention also

encourages innovation throughout the shipping industry to respond to stringent pollution control measures.

Looking Ahead

For MARPOL to remain relevant in the ever-changing environment, it has to incorporate new threats like; climate change, micro plastic pollution and changing nature of wastes. The 2023 analysis of current issues in maritime legal systems shows that it is necessary to expand the list of MARPOL measures and adopt more severe requirements for emissions and micro plastics regulation. New additions such as Annex VI to control air pollution are evident of this flexibility; however, these guidelines offer little regulation in addressing current pollutants including plastics, COVID related wastes, and greenhouse gases which threaten the marine environment. Specific updates that must include contemporary monitoring technologies, such as remote sensing and systems based on IoT devices, could considerably improve compliance and enforcement. Such measures would ensure MARPOL is still in harmony with modern civilization environmental concerns, promote sustainable maritime practices and combat both pollution and climate change.

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Impact of Legalising Marijuana in India: A Comparative Analysis With Europe

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Abstract

This paper examines the possible economic benefits that legalizing marijuana may bring to India by comparing changes that European nations have been undergoing lately concerning marijuana law. Marijuana laws can approach different aspects in India like job development, taxation revenues, agricultural development, etc. This paper explores the practices of European countries, likely the Netherlands, Germany, and Portuguese. It has a deep analysis to regulate the marijuana market in economic growth, a reduction in illegal trade, and enhanced public health. It teaches how European states use systematic policies to provide growth and boost the economy as well as foreign investment. The study shows that India's huge population along with agricultural resources offers exclusive economic benefits of marijuana legalization. However, the issues arise with bureaucratic barriers, societal prejudices, and public health risks. To have a balanced approach India should have well-designed policies, strong health infrastructure, and economic support. This research describes how marijuana legalization can impact Indian economic growth and innovation in India.

Keywords: Marijuana Legalization, India, Narcotic Drugs and Psychotropic Substances Act of 1985, Germany, Decriminalization, Medical cannabis, Tax regulation, Regulatory framework.

1. Introduction

Marijuana legalization has become one of the vital matters in global policy debates with European countries leading more innovative methods. Success stories from the Netherlands and Portugal illustrate potential benefits, balancing public health

priorities against economic and social considerations. India, however, is still under the constraint of heavily prohibitive laws in the Narcotic Drugs and Psychotropic Substances Act of 1985, which attaches deep historical association with this drug for religious and medicinal purposes.[1]

The Dutch model of tolerance to cannabis-regulated marijuana is sold through licensed outlets. It has curbed black-market activities and fetched substantial tax revenues and low rates of marijuana dependency.[2] On the contrary, the country's decriminalization strategy has shown excellent results in the context of minimization of drug-related harms such as overdose deaths declining and drug crimes going down.[3] These examples contrast starkly with the Indian punitive approach, which worsens the nightmare of overcrowded jails and unregulated black-market trade.

In addition, European nations have adopted marijuana policies in support of a coherent economic policy. For instance, In Germany medical marijuana legalization has increased the medical and agricultural industries. By contrast, India's inability to leap on similar prospects becomes a lost opportunity in the face of a burgeoning world market for the cannabis industry.[4]

A comparison reveals the urgent necessity to change the current marijuana policy in India, drawing lessons from Europe. India needs to shift from a punitive approach to regulation-like measures to meet paramount public health concerns, reduce the legitimate burden on the legal system, and realize critical economic opportunities.

2. Historical Context

Marijuana has a very long history in India and Europe, but the legal treatment of this substance has been more significantly impacted by societal, cultural, and international factors over time. Cannabis has a very ancient background in both India and Europe but the legal treatment of cannabis has greatly changed through time and that was very much influenced by factors of society, culture, and internationally. Germany has developed one of the more intricate legal regimes in Europe surrounding medical cannabis. Marijuana is legal under strict conditions for cannabis under the Medical Cannabis Act of 2017. With the prescription of a doctor, chronic pain multiple sclerosis patients are permitted a variety of serious diseases can use the cannabis. The historical context of marijuana regulation

in these regions serves as a background for analyzing current policy and reform.

2.1 Historical and Legal Perspective of India

Apart from being associated with religious rituals and traditional medicine, marijuana, known as bhang, ganja, or charas, has been part of Indian culture for centuries. Cannabis is described as one of the five sacred plants in ancient Hindu scriptures (the Vedas), highlighting the spiritual importance of this plant.[5] However, colonial influence reshaped India's cannabis policies. The British, who initially tolerated cannabis use but began regulation through the Indian Hemp Drugs Commission Report of 1894, recommended minimum restrictions on personal use because of its cultural prevalence.[6]

India's policy changed dramatically with the advent of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985. The NDPS Act criminalized all aspects of the cultivation, sale, and use of marijuana, in line with international treaties such as the Single Convention on Narcotic Drugs of 1961.[7] By seeking to align with global drug policies, India did away with its erstwhile practices and indigenous knowledge systems.

2.2 European Historical Context

In Europe, the history of marijuana took a different course, derailed by scientific interest and changing social views. In the 19th century, cannabis was employed widely in European medicine, with nations such as France and the UK experimenting with its therapeutic use. However, by the middle of the 20th century, anti-drug campaigns and international conventions led most European countries to outlaw cannabis.[8]

The tide of change arrived in the late 20th century when the countries of Europe started rethinking their harsh drug laws. Dutch tolerance policy dates back to the 1970s when it isolated marijuana as a soft drug from the harder drugs, which were thereby made available for regulated sale in licensed coffee shops. This realistic approach is aimed at controlling the surging demand for cannabis while having minimal interference from criminal justice.[9] Similarly, the revolutionary approach Portugal took in 2001 by decreeing to decriminalize all drugs based on public health rather than criminalizing them.[10]

India's stance toward prohibition stands in stark contrast to the progressive reforms noticed in Europe. India's NDPS Act, for instance, still takes a strong punitive approach, whereas the legal systems of many European nations maintain a balance between cultural, economic, and health-based interests. For example, Portugal's harm-reduction approach and the Netherlands' regulated cannabis market benefit from the integration of historical and social realities into their legal systems.[11]

3. LEGAL FRAMEWORKS:

The legal frameworks regarding cannabis in Germany and the Netherlands are some of the most structured and impactful in Europe. These models shed light on how regulation can focus on public health, economic benefits, and harm reduction in contrast to the approaches followed in other regions. Other European countries like Portugal, Malta, and Luxembourg provide supplementary perspectives by adopting different methods to control and utilize cannabis.

3.1 Germany: Medical Cannabis and Strict Regulation

Germany has created one of the most complex legal administrations in Europe over medical cannabis. The Medical Cannabis Act of 2017 made marijuana legal for the use of cannabis for medical purposes under strict circumstances. For instance, with the prescription of doctors' patients are allowed to use cannabis for chronic pain multiple sclerosis, and any severe diseases. The law also administers cultivation, confirming the quality of the cannabis production for the medicinal use of cannabis which is also supplemented with imports from countries like the Netherlands.[12]

3.1.1 Economic Impact

Legalizing cannabis and the cannabis industry in Germany while making the space legal has opened doors in cultivation, research, and retail employment. A major part of Germany's medical cannabis needs to be imported across the globe noting its limited production capacity. The safety regulations are further continued in the system when the certified persons are accepted under its licensing process and improved tax collection.

Implementation of new ideas will be introduced by July 2024 including the growth of an individual and cannabis organization for non-profit use, which is expected to create an additional boost to the economy. This progress should start to break down the illegal market

and shift towards legal markets. It's estimated that the finalized legalization model will attract hundreds of billions in taxes a year and support indirect businesses like technology, packaging, and logistics.[13]

3.1.2 International Trade and Investments

Structured legalization with caution has propelled Germany to become a frontrunner in the EU cannabis market. The openness of the legal framework that adheres to the pharma directives of the European Union has attracted a sizeable amount of foreign direct investment. Medical cannabis entrepreneurs are optimistic about the possibility of Germany opening up because it will lead the wave in other European countries.[14]

3.1.3 Benefits to the Public

Tax income from the cannabis industry is specifically devoted to public health programs, savings in law enforcement expenses, and youth prevention measures. The German government plans to assess the overall liberalization's impact on public safety and organized crime in collaboration with the Federal Criminal Police Office, thereby preventing economic benefits from coming at a cost to public health.[15]

3.1.4 Cultivation and Licensing

Germany's structure is highly centralized, as cultivation licenses are issued by the Federal Institute for Drugs and Medical Devices.[16] This way, quality control is highly maintained and diversion to illegal markets is avoided.

3.2 Netherlands:

The Netherlands, with a special cannabis policy framework established under the Opium Act of 1976, legalizes the possession and sale of small quantities of cannabis in licensed coffee shops. This is designed to separate the soft and hard drug markets and limit the possibility of users progressing to harder drugs. However, cannabis production and wholesale supply are illegal, which gives rise to what is termed the "backdoor problem," whereby coffee shops must obtain products from unregulated and possibly illegal markets. The government is addressing this through pilot programs regulating cannabis supply chains in ten municipalities.[17]

3.2.1 Regulation of Coffee Shops: This policy seeks to differentiate soft drugs like cannabis from harder drugs like heroin and cocaine, a

principle that is often quoted as the "separation of markets" strategy.[18]

3.2.2 Public Health and Safety: By legalizing the retail aspect, the Netherlands minimizes black market activities and ensures consumer safety. Studies show that regulated environments reduce risks of contamination and unsafe consumption.[19]

However, the "backdoor problem" is a significant challenge in that coffee shops obtain their cannabis from unregulated producers. Efforts are underway to create legal supply chains under experimental programs launched in 2021.

3.3 Other European Countries:

3.3.1 Portugal: Decriminalization under Drug Law 30/2000 refers offenders to health panels, where treatment supersedes punishment. This policy has decreased overdose deaths and improved public health statistics.[20]

3.3.2 Malta: Malta was the first country to implement limited recreational cannabis use through legalization in 2021. The citizen can retain up to 7 grams and grow four plants, with a focus on issues of harm reduction.[21]

3.3.3 Luxembourg: Luxembourg legalized planting up to four plants to be used personally in 2021 while trying to reduce black-market activities without compromising public security.[22]

3.3.4 Czech Republic: It allows marijuana in small quantities for personal use and medical usage under the law, combining decriminalization with a regulated medical approach.[23]

4. Benefits Of Legalizing Marijuana In India

The advantages that legalization of marijuana can provide, like better economics, healthcare system, law structure, and taxation; especially in India. The primary advantage is that legalizing marijuana might reduce the heavy legal burden on the courts and prisons of India. Because of the policies made under the Narcotic Drugs and Psychotropic Substances Act, many cases of marijuana are considered offenses in overcrowded Indian prisons and overburdened courts. If India follows Portugal’s drug law 30/2000, which decriminalized the ownership for personal use and concentrated on reducing the harm through health panels rather than criminal prosecution, the cases relating to marijuana would also be reduced in India. The studies propose that it has reduced the rates of offenses in European countries and allowed judicial resources to be

used for serious crimes, making the justice system more efficient. In the same manner, India could also benefit by shifting resources to more serious crimes and thereby creating a fair and effective judicial system.[24]

In India, there is obvious potential and incredible growth in the economy. In European states, the legalization of cannabis has become the new source of income from taxation and licensing fees. Germany's Medical Cannabis Act, 2017 policies legalized cannabis in the medical industry. This has introduced a regulatory market in cultivation, production, and distribution, consequently adding public health benefits and economic growth. Through regulating actions of cannabis legalization Germany has safeguarded access to medical cannabis and promoted a sustainable industry, with the advantages of sales of medicine, licensing fees, and exportation to the national economy.[25]

India is capable of following a similar method mainly because the climate of India is more suitable for growing marijuana, moreover, the country is rich in agriculture. India would produce more tax currency by introducing marijuana production and would generate employment opportunities in various sectors, including both internal and external sales which would improve the Indian economy.

Public health benefits are another vital argument for marijuana legalization. In Portugal, marijuana has been decriminalized; in continuation with this procedure of decriminalization has tailed the direction of public health strategies including decreasing harm, addiction treatment, and mental health conditions. This gives importance to implementing public health approaches with new cannabis policies, addressing issues like addiction while decreasing the harm affecting society caused by criminalization.[26]

In India, marijuana legalization would confirm quality control to avoid the production of unregulated, unsafe products. Currently, the Indian marijuana market often deals in contaminated products that expose a substantial threat to health. The Cannabis guidelines would make it possible for the government to impose safety standards and educate people on how to use it. Applying this method the public's health would be protected, which also makes the improved health sector respond to risks relating to the use of

marijuana, releasing the burden exerted on healthcare systems and making consumption safer.

5. SOCIAL JUSTICE AND EQUITY

India's firm marijuana regulations and laws under the NDPS Act aim at marginalized communities with minor offenses in marijuana ownership, sending more proportion of defenseless people to custody. These viewpoints contrast with Portugal's method, as introduced in the Drug Law 30/2000, where personal drug was decriminalized, and punishment was secondary to treatment. This has assisted in benefiting the socio-legal effects on criminals, mainly for those belonging to marginalized communities.[27]

European models such as Germany, Netherlands, and Portuguese controlled cannabis schemes on reinvesting in forbidden societies. In this instance, the currency collected from marijuana legalization for medical use sales drives toward health and educational inventiveness and encourages social well-being and fairness.

Such an approach highlights the possibilities for restorative justice, providing a model for India to use cannabis revenue to transform its judicial and social structure.[28]

Further, a reform in India's cannabis policy could include harm reduction, similar to that which the Portuguese government has incorporated into its policy. Instead of punitive measures, India would focus on rehabilitation through treatment interventions, thereby removing unnecessary legal burdens from marginalized populations and making education and other public health services more readily available. According to EMCDDA, these types of reforms promote social justice while keeping public health intact.[29]

6. Challenges in Implementation

6.1 Regulatory Obstacles in Indian Law

Reforms in India regarding marijuana are very complex because of the complexity of its legal and bureaucratic systems. The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, strictly criminalizes cannabis-related activities. Any attempt at legalization would require amendments to this Act and a careful alignment with international treaties like the 1961 Single Convention on Narcotic Drugs, for which India is a signatory. Furthermore, the federal nature of India's governance adds complexity, as states have significant control over agriculture and law enforcement. Resistance

from conservative legal and political groups further complicates reforms. For instance, the cultural stigma surrounding cannabis, coupled with international scrutiny, adds layers of resistance to legalization efforts.[30]

6.2 Lessons from European Legal Challenges

Europe holds lessons for India in how to approach legal reform. The "coffee shop" model in the Netherlands was highly successful in controlling retail sales of cannabis but had policy gaps in controlling large-scale production that created unintended legal ambiguities that remain a challenge to policymakers. Portugal's decriminalization model needs to educate public campaigns to win over the public, initially questioning the approach.

These instances require strong legal frameworks and precise implementation plans to curtail accidental consequences, and India can learn from these lessons, and encounters by safeguarding the legal framework addressing the issue of production, distribution, and public perception efficiently. [31]

These advancements would bring stability between legal reforms and international compulsions, learning from the achievements and mistakes of marijuana legalization in Europe.

7. Policy Recommendations

7.1 Legalizing Medical Marijuana

Legalizing medical marijuana should be focused on following the structure of Germany's Medical Cannabis Act of 2017 as a guiding framework. It has emphasized patient access through prescription, distribution, and cultivation systems balancing the necessity with public health. In India, existing provisions under the Narcotic Drugs and Psychotropic Substances Act of 1985 permit the use of marijuana for scientific research which would add confirmation with international practices to create a body responsible for licensing and quality control regulation. [32]

7.2 Gradual Decriminalization

Decriminalizing marijuana for personal use would steadily reduce cannabis crimes and improve public health outcomes. Portugal's experience under Drug Law 30/2000 shows how administrative penalties, rather than criminal ones, can redirect offenders to health services, easing judicial pressure and improving outcomes for minor drug offenses. India can draw similar measures

to introduce gradually, public and institutional acceptance of marijuana reform.[33]

7.3 Regulatory Framework

India needs to have an integrated regulatory framework to fully exploit the economic and public health benefits of legalization. In this respect, Germany can be used as a template by merging cannabis regulation into existing agricultural and pharmaceutical policies with its structured tax and licensing system. This way, cultivation and distribution can be carried out legally, and enormous revenues and employment will be generated. Such a framework would also include tight quality control measures to prevent misuse and ensure safety for product use, particularly for medical and therapeutic use.[34]

This provides a roadmap for India to balance economic benefits, public health priorities, and legal integrity.

8. Conclusion

These reflect a complex interplay among different legal, social, and economic factors of legalization and the impacts of the same within Europe, including Germany, Portugal, and the Netherlands on India. European models of balance between regulation and reducing harm have paved the ground for progressive drug policies: Germany's medical marijuana setup, Portugal's approach to decriminalization, and retail systems under control from the Netherlands. All these India must adapt to its particular social/legal circumstances.

Legalization of marijuana would bring the following benefits to the country. It would be easy on the courts from the legal burden, enhance regulation on public health, and unlock some economic opportunities. But at the same time, India's existing legal framework and especially the NDPS Act pose significant obstacles. The over-reliance on the prohibitionist approach makes the criminal justice system heavily overburdened and pushes the black market. Such issues may be addressed through a more flexible legal framework, inspired by European models, allowing public health, social justice, and economic goals to be met.

Phased implementation, which begins with the legalization of medical marijuana, followed by decriminalization and an effective regulatory framework, maybe most feasible for India to implement marijuana reforms successfully. With lessons learned from European

countries, such as Germany focusing on patient care and Portugal on rehabilitation, India can model a legal and economic model that minimizes harm and fosters social equity.

Ultimately, the experiences of European nations show that legalizing marijuana might help develop the economy by reducing harm and social justice. In a careful adaptation of these models, India might achieve an equilibrium in balance and justice in its laws regarding the use of marijuana.

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Revoking Special Autonomy: Examining The Constitutional Legitimacy of Article 370 Abrogation and Its Impact on Jammu and Kashmir

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Abstract:

This research paper focuses on the Abrogation of Article 370,the constitutional provision which gave special autonomy for the State of Jammu and Kashmir.The constitutional provision was scrapped off from the Indian Constitution on 5th August, 2020 based on agenda to protect the National integrity of the Country.The State of Jammu and Kashmir was alienated throughout the years wherein, it was in the territories of India,but was regulating as a separate country. It has its own constitution and National flag, and any legal provisions which were introduced in India shall not extend to the State unless and until the State Government accepts. This Article was abrogated on the grounds to safeguard National Integrity and to curb terrorism and nepotism prevalent in the State of Jammu and Kashmir.

But was this abrogation a constitutionally valid decision taken by the Indian Government? There were a lot of explanations given by the Government with respect to the removal of Article 370 that it led to various industrial developments in Jammu and Kashmir,that Kashmir could move forward. The Abrogation of Article 370 is a decision which was taken to take Kashmir forward while the situations showcases that it was to use Kashmir for its own beneficiary.A clear analysis to the mentioned allegations have been analysed in this legal research article. The decision to abrogate Article 370 passed through presidential order was to save Kashmir's National Integrity or for the Indian Government's advantage?

Keywords: Abrogation of Article 370, Indian Constitution, Article 370, Terrorism and Nepotism in Jammu and Kashmir, Tourism Development in Jammu and Kashmir, Industrial Development in Jammu and Kashmir, Validity of Presidential order of Article 370.

Introduction:

The removal of Art.370 is one of the most important and unique constitutional order taken by the Central Government of India. Art.370 was introduced as a temporary provision, giving special recognition to Jammu and Kashmir, by giving them the authority to form a Constitution of its own.[1] The State of Jammu and Kashmir was the most dangerous area to be present in at the time of Abrogation of Art.370. The need for Article 370 and special status for Kashmir occurred when India got it's Independence on 15th August 1947[2]. *"After Independence, the State of Jammu and Kashmir was claimed by both India and Pakistan which led to the First Indo-Pakistan War between the year 1947 to 1948. Since the majority of the population in the State of Jammu and Kashmir at that time were Muslim, it led to widespread conflicts, which resulted in bloodbaths between India and Pakistan. In order to handle this situation in peace, there was a temporary provision introduced, which gave the State of Jammu and Kashmir special status. Article 370 was first introduced as a temporary provision but the provision has been in existence since India got it's Independence. Enacted for the first time in 1949, the provision granted special privileges and autonomy to Jammu and Kashmir, allowing the state a considerable degree of legislative and socio-political independence".*[3] Jammu and Kashmir had its own Constitution, and its own flag, which indirectly resulted in a country functioning under India entirely from the year of 1947 to 2019. Art.370 gave the region of Jammu and Kashmir had the exclusivity of having its own Legislation,Constitution,its own legal provisions,moreover the most highlighted provision under Art.370 was that the legal provisions set under the Government of India shall only extend to Jammu and Kashmir, only when the Government of Jammu and Kashmir authorises and passes it.The provision was added on 14th of May,1954 in the Constitution through passing a presidential order.The temporary residents or non-residents, and women belonging to the region of Jammu and Kashmir who shall marry a non-resident of the Jammu and Kashmir

State; that is if the individual whom they get into a legal marriage with is not a Kashmiri,they shall be excluded from their right to settle, they will not be allowed to get involved in the property sale and purchase and shall not be considered for Government jobs,Scholarships that the State Government offers.[4] The people of Jammu and Kashmir shall have citizenship rights in both Jammu and Kashmir and India, but Indian citizens cannot invoke citizenship rights in Jammu and Kashmir.The legal obligations which have to be fulfilled under Art.370 being a temporary provision,has put a blackmark in the Constitutional provisions of India.[5]

Historical Background of Article 370 of Indian Constitution:

The Chronological background of Art.370 started with the division of India and Pakistan after India attained Independence from the British.[6] "*Following the independence of India and Pakistan, suzerainty of the British Crown over the princely states came to an end,13 which meant that the paramount powers of the states was returned to them".*[7] Maharaja Hari Singh was the supreme head of the region of Jammu and Kashmir at that time, and his decision was to retain the State's independent autonomy.Since the region of Jammu and Kashmir was a Muslim majority being ruled by a Hindu ruler, Maharaja Hari Singh wanted to retain the State's independent autonomy since it involved two major religions, and it is geographically part of both India and Pakistan.Since Jammu and Kashmir was also in conflict with China which resulted Indo-Chinese war. "*The Aksai Chin territory, 14,380 square miles, is under the control of China. It is the disputed area between China and India and resulted in the China–India war in 1962.2 Since regional conflict 1947, the ethnic, linguistic, and religious diversity of people of Jammu and Kashmir is playing avital part in determining the political and historical situations".*[8] Maharaja Hari Singh wanted to retain independence of Jammu and Kashmir from India,but taking this delay for signing the "Instrument of Accession" with India by the ruler of Jammu and Kashmir, Maharaja Hari Singh, it gave a widespread advantage for Pakistan which invaded into the region of Jammu and Kashmir. "*Pandit Jawaharlal Nehru appointed Mr. Gopalaswamy Ayyangar, an IAS Officer, who drafted the Article 370, which defined the relations between India and J&K. But Dr. B.R. Ambedkar always opposed this Article because he thought that it would create a difference between other states. While signing the*

Instrument of Accession (IOA), the Indian Government also promised that it would conduct a plebiscite in the state to know the views of the people of the state. And the Maharaja with the threat from the Pakistani infiltrators went to Jammu. Meanwhile, Mr Sheikh Abdullah, the founder of J&K Muslim Conference which later got renamed as All J&K National Conference in 1939, in order to represent all the people of the state, becomes the Prime Minister of Jammu and Kashmir in 1948. It is argued that Sheikh Abdullah supported accession of the Princely states to the Indian Union because he wanted to get rid of the Maharaja's rule. Around this period Pt. Nehru and Sheikh Abdullah signed an agreement known as "Delhi Agreement" in order to improve the relations between the state and the Union".[9] Therefore, it was upto the State Assembly of the State of Jammu and Kashmir, in order to accept the Instrument of Accession of the Union of India. Until then, in order to control the Muslim population of the State of Jammu and Kashmir, Art.370 was enacted as a temporary Provision. "*The accession of Jammu and Kashmir was carried out on the same pattern other states acceded to it. But as a result of the misfortune of the country, Jawahar Lal Nehru pressurized the Maharaja for handing over power to Sheikh Abdullah. On request of Sheikh Abdulla it was decided that the State Assembly will take the final decision on the accession and it was done to appease the Muslim society in Kashmir. From here the state was given the special status. x The question arose as to what should be till the assembly took the final decision? For this period Article 370 was incorporated in the Constitution as a temporary measure"*.[10] The temporary provision which was setup, had turned out to be a permanent provision even after the establishment of the State Assembly.

The Abrogation of Article 370: Process and Execution:

The removal of Art.370 is by far the most landmark constitutional decision taken by the Government of India in the history of Constitution of India. "*On 5th of August, 2019, Jammu and Kashmir Reorganization Bill, 2019 was passed to the Rajya Sabha, by Home minister Amit Shah. This Bill was passed with the main agenda to turn the State of Jammu and Kashmir into Union territories; Jammu and Kashmir and Ladakh shall be converted into Union Territories. The union territory of Jammu and Kashmir was proposed to have a legislature under the bill whereas the union*

territory of Ladakh was proposed to not have one. By the end of the day, the bill was passed by Rajya Sabha with 125 votes in its favor and 61 against (67%). The next day the bill was passed by the Lok Sabha with 370 votes in its favour and 70 against it (84%). The bill became an Act after it was signed by the President".[11] The Jammu and Kashmir Reorganization Act, 2019 was shortly passed after this. The removal of Art.370 had a great influence with the enactment of The Jammu and Kashmir Reorganization Act, 2019. Both the Jammu and Kashmir (Reorganization) Bill, 2019 and the Jammu and Kashmir Reorganization Act of 2019 were greatly influenced by the deletion of Art.370, which in turn paved the way for their passage.[12] "*Exceptional significance is bestowed to each of these statutes. Article 3 of India's constitution authorized the first of these laws, which entrusted the state's administration to the regular processes and procedures used by other Indian states. This was done in order to free the state from the demands and compulsions that Article 370 imposed. The second of these acts made Jammu and Kashmir one single union territory, while Ladakh was designated as a separate union territory (Nisar, 2019)"*[13] The Decision had its own criticisms. The decision was challenged to be unconstitutional, and had allegations that it led to giving the Union Government to abrogate a provision which gave special status to a State protecting its individual autonomy. The decision was challenged on the grounds that it was unconstitutional because the Government Order passed by the President of India did not include any elected representative from the Jammu and Kashmir State. The Apex Court of India rejected the petitioner's arguments. There were allegations against the Union Government which stated that they didn't follow the federal principles and went against the Constitutional principles which not only undermines the historical aspect but, it does not follow the Constitutional legislations which are being followed for decades.[14]

Constitutional Validity and Presidential Order:

The Constitutional provisions with respect to the removal of Special Status of Jammu and Kashmir is Art.370 and Art.35A. Article 370 of the Indian Constitution provided individual autonomy for the Jammu and Kashmir State, by giving them the power to form their own Government, Constitution and their own flag. It also gave the State Government the legitimate right to enact their own legal legislations, and legal legislations which extend to the Indian States

shall not extend to the Jammu and Kashmir State, unless the State Government of Jammu and Kashmir passes acceptance for the same. Art.35A dealt with the special rights and provisions provided only to the people of the State of Jammu and Kashmir. This Constitutional provision deals with employment, scholarships, inheritance of property. Both of these legal provisions were scrapped off.This Constitutional Order was challenged on the grounds that it was unconstitutional, since no political representative from the Jammu and Kashmir State was included, which led to allegations that it was an arbitrary decision to pass the Presidential order to abrogate Art.370, without the consultation or suggestion from the State Government of Jammu and Kashmir, even after the ratification of the State Assembly. "*Article 370(3) provides President of India has the powers to amend on repeal the Article by issuing a notification, based on a recommendation on constituent assembly of J&K. The President of India signed the constitution (Application to J&K) order 2019, issued on 5th August 2019 regarding Article 370(1) under which all the provision under Article 4 of the Constitution of India would be applicable to J&K. J&K constituent assembly would be read as J&K Legislative assembly. Now since Presidents rule is in force in the state, implementation of Article 370 would cease to exist when President of India issues the notification in this regard. So the President of the recommendation of the Parliament of India declared that as from August 6, 2019, all clauses of the Article 370 shall cease to be operative"*.[15] But, if the Central Government would have included the politicians of the State of Jammu and Kashmir, the State government of Jammu and Kashmir would have not recommended to remove Art.370, since it was very clear that the State Government of Jammu and Kashmir did not want to lose its individual autonomy.This would have led to prolongation of various terrorism and nepotism activities to prevail in the region of Jammu and Kashmir.[16] In order to handle the intense condition of violence in the region of Jammu and Kashmir, the Central Government of India has no other choice but to scrape of Art.370 of the Constitution of India.Even though, the presidential order does not follow the basic Constitutional procedures, it was necessary since the provision was supposed to be a temporary provision,and it was supposed to be repealed.Therefore, even if the presidential order passed by the Union Government was assumed to be Unconstitutional, Art.370

was a temporary provision and it was one of the reasons for the occurrence of terrorism if the Jammu and Kashmir region.There are criticisms showcased towards the Central Government stating that they didn't follow the doctrine of Secularism, by scrapping off the Individual autonomy,the Central Government did not give importance to the Islam majority and the religious values they followed.[17] But the main agenda behind scrapping off Art.370 was to include the Jammu and Kashmir State as its own and also to put an end to the terrorism and Anti-National activities in the State of Jammu and Kashmir. "*The purpose of the decision was to assist the region of Jammu and Kashmir in becoming more integrated into the Indian Union. This was achieved by removing a rule causing disagreements between the residents of Jammu and Kashmir and the rest of India. However, the decision to remove Article 370 sparked much discussion because it had the potential to impact the freedom and distinct culture of the Jammu and Kashmir region. A few people who analyse and evaluate things have mentioned that the decision was influenced by politics rather than being genuinely dedicated to secularism and social justice principles. By examining how Article 370 impacted the idea of secularism in India, considering its history, the religious composition of Jammu and Kashmir, and the consequences of its removal, we can better understand the complexities surrounding secularism in India*".[18] Therefore, it cannot be put forward that the decision superseded the Doctrine of secularism of the Indian Constitution,when the concept itself is very wide. The Jammu and Kashmir State was not alike to any other State of India and it had its own major complications.

Legal Implications of Jammu and Kashmir Post-Abrogation of Article 370:

Post-Abrogation of Art.370 and Art.35A of the Indian Constitution has led to several changes in the region of Jammu and Kashmir.The Jammu and Kashmir Reorganization Act, 2019 had bought in several positive impact with regards to the condition of the State.There were various improvements with regards to Fundamental Rights,Gender Equality,Secularism etc.There were various changes which took place Post-Abrogation of Art.370.Since the State of Jammu and Kashmir got itself converted into Union Territory.Since India is a Democratic Republic, there should be the concept of By the people,Of the people, For the people mechanism followed.

Instead,Art.370 divided the State of Jammu and Kashmir and India into two separate functioning administrative countries,breeding in room for separatist activities.The State of Jammu and Kashmir had its own Constitution and did not have the privilege of fundamental rights which is elaborated in the Constitution of India.[19] There were various fundamental rights under Art.35A which were discriminating on the grounds of Gender. "*A Kashmiri man is permitted to wed someone from outside Kashmir under Article 35A while still being entitled to his parents' land and possessions. A Kashmiri woman, however, forfeits her rights to land and property if she marries an Indian who does not reside in Kashmir, according to the same article. Therefore, a Kashmiri woman is forbidden from marrying anyone of her choosing if she wishes to keep her claim to ancestral property. This imbalance was rectified and gender equality was restored with Article 35A's removal*".[20] This was one of the most important reason for scrapping off Art.35A since it was completely unfair for the female gender to not have the ability to inherit property when the female gets married to a Non-Kashmiri.The special status was taken into advantage which led to various terrorism and nepotism, which caused downfall to the whole State, and this was the reason behind the scrapping of Art.370.[21]

Government's Legal Reasoning and Justification:

The Central Government justified the removal of Art.370 and Art.35A as a decision for protecting the National Integration and to shield the Jammu and Kashmir region,from Anti-National activities such as terrorism,nepotism,narcotics and other illegal and anti-national pursuits. There are various other States do have special provisions such as Maharashtra, Nagaland, etc.[22] The Government's reasoning as to the differentiation between those States and the region of Jammu and Kashmir is that Jammu and Kashmir administered legally and it had its own flag and Constitution.With regards to States with special provisions,they still were legally bound to the legal legislations of India,but for the region of Jammu and Kashmir, it was not bound unless and until the State Government decides to be part of.The Supreme Court of India passed the judgement supporting the Central Government in terms of Abrogation of Art.370.[23] The Central Government's reasoning laid emphasis towards the Anti-National activities which took place legally under the jurisdiction of State government of Jammu and

Kashmir.Under the name of Special Status, there were various legislations which were discriminatory towards women when it came to inheritance of property.

Conclusion:

The decision to abrogate Art.370 and Art.35A has its own advantages and disadvantages.But, the end result Post-abrogation of Art.370 has resulted in a positive change for the region of J&K.Even though the procedure which was followed to scrape Art.370 & 35A was challenged to be unconstitutional,the abrogation had led to decrease in Anti-national activities which prevailed in the region of J&K.[24] "*The state of Jammu & Kashmir has achieved the status of an independent state under sections 370 and 35 (a) during the last 70 years. This kind of status has also been received by the north-east constituents of the Indian Union. The demand for the elimination of the status of a separate constituency of Jammu & Kashmir has never been demanded by the Indian people through movement or any other way in the last 70 years*".[25] Even if one assumes that the decision taken by the Union Government of India was unconstitutional,it cannot supersede the fact that Jammu and Kashmir was the breeding place of terrorism and Post-Abrogation,since it was converted into one of the centrally administered territories, there has been a considerable amount of decrease of Anti-national activities prevailing in the region of Jammu and Kashmir.[26]

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Environmental Law and Climate Change: Legal Approaches to Mitigation and Adaptation

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Abstract

This paper examines the crucial role of environmental law in fighting climate change, concentrating on its dual goals of mitigation and adaptation. Mitigation aimed at reducing greenhouse gas emissions and their sources, as well as climate change and global warming, is needed. This requires the creation to enhance energy density, the development of renewable power sources, and sustaining the natural stocks of carbon. In contrast, adaptation accepts that change has occurred regarding climate and focuses on coping with these changes. Risk management of disasters, hazards, and positive impacts related to climate change, sustainable planning of cities and towns' spatial structure, and habitats, so that ecosystems and human settlements are capable of adapting to climate change. Analyzing the role of the existing international treaties, national legislation, and judicial decisions in combating climate change is the focus of the paper. Cooperative commitments are embedded into treaties such as the Paris Accord[1] as emissions decrease and climate resilience commitments and contextualized through national policy. The Urgenda and Leghari concerns, for example, reveal the judiciary as a key agent of climate change accountability and the driving of large-scale climate action. However, despite such improvements, current legal tools encounter recurrent issues. Looseness in enforcement, especially in areas of diminished resources, is a major weakness of the laws. On this basis, it needs to be recognized that lack of funds poses a major obstacle to the application of mitigation and adaptation measures, particularly in developing countries. Another challenge, many uncertainties in climate laws and that there is not much integration of climate regulation globally. However, the varying result of climate impacts do raise some equity also justice

issues. To this end, it stresses renewal and innovation in governance processes where weak groups are involved in decision-making and where intergenerational equity is observed. It is expected then, that by narrowing down the research gaps and providing practical solutions, the paper will improve the legal approach towards climate change and develop sustainable legal solutions for a better future.

Keywords: *Carbon Stocks, Mitigation Strategies, Climate Change, Adaption Measure, Paris Agreement*

Introduction

Climate change is undoubtedly one of the largest and most multifaceted problems of the contemporary world that affects populations and countries, economies and societies, species, and resources, in different and often unpredictable ways. Unlike most environmental interaction activities, climate change occurs in interactive global spaces and has disparate impacts on societies. The main cause of this type of crisis is an accumulation of greenhouse gases (GHG) in the atmosphere. The negative effects include; the greenhouse effect which leads to increased levels of the sea which is a big threat to the coastal areas; Productivity is also affected by natural calamities such as hurricanes, drought, loss of species, and interruption of food chains thus shortage of foods and acute water shortage which are threats to man.

Alarmed by the climate emergency, scientists, policymakers, activists, and international organizations have made climate change a focal area. All these are based on the fact that, actions that have an impact are required and that they must be done now to offset the current emissions along with embracing sustainable actions and also for mitigation of the result which climatic variation is predicted to cause. Overlaying all these campaigns is environmental law, one of the most essential legal systems through which climate change is fought, and human activities that affect the environment, are controlled. Environmental law serves as both a shield and a catalyst: it protects natural resources against destructive uses, at the same time acknowledging and encouraging innovation.

The baseline understanding of environmental law is its complexity rooted in its being simultaneously interdisciplinary and multi-scalar. At all three tiers of governance, international, national, and subnational, each has a distinct role to play against climate change. International agreements define general standards and

guidelines for the countries to adhere to while national laws implement these principles with/case of reference.

One of the key contributions of environmental law to oppose climate change is situated in its ability to address two critical aspects: mitigation and adaptation. Reduction involves the measure, which is taken to minimize the causes of emissions of GHG or to scale down the process of global warming. Agreements like the Paris Agreement are global bilateral and include a commitment for mitigation where Parties have committed nationally determined targets towards emission reduction and stimulation of cooperative action.

Climate governance can boast of having the most important milestones in 2015 with the adoption of the Paris Agreement. Its purpose is to prevent global warming to more than 2°C above pre-industrial levels alongside the more ambitious target of 1.5°C. Nevertheless, the general public has endorsed the agreement; however, the success depends on the commitment, compliance, compliance, implementation, and follow-up of those NDCs.

It is also backed up at the national level by an exhaustive code of practices and mitigation laws and policies. For instance, Europe's Green Deal known as a set of financial, industrial, and transport proposals that it refers to as the European Green Deal[2] launched recently works towards reaching the 2050 climate target which includes changing to renewable energy, promoting electric mobility, and improving energy efficiency.

The second pillar for climate action, adaptation includes anticipating the change that are happening or unavoidable. While mitigation strategies strive to avoid new harm from occurring, adaptation strategies work towards reducing everyone's exposure to climate impacts. Frameworks for adaptation cover numerous sectors as disaster risk reduction, land-use planning, water management, and nature conservation.

The climate change aspect that has been observed most visibly in the data is reduction in the adaptive capacity which means that natural disasters such as floods, hurricanes, and wildfires have occurred more frequently under worse conditions. Legal aspects for disaster risk reduction include early warning, preparedness, and response hence government framework innovations aid in these impacts' reduction. For example, the Bangladesh Climate Change

Strategy and the Bangladesh Climate Change Action Plan[3] link disaster risk reduction into its national developmental framework since the country is exposed to risks such as rising sea levels and cyclones.

In the context of agriculture and water resources, adaptation measures refer to climate-smart agriculture, water conservation rigorous water sharing. These are legal areas that need to be covered so that adequate protection of the food and water supply can be provided due to shifting rainfall patterns and a rise in temperatures.

By dint of its scope and multipronged approach environmental law is a vital tool for combating climate change. Also, the legal framework should evolve along with climate challenges and persistently remain relevant in effectively combating and adapting to the changes that form the basis of climate.

Main Body

Mitigation Strategies

1. Regulatory Mechanisms in Mitigation

Mitigation, the action aimed at decreasing the intensity of emissions of GHGs and the rate of climate change, depends on legal norms that are obligatory to follow. A typical strategy consists of setting emissions limits through control of pollution and the establishment of renewable energy requirements as the core of mitigation activities. EU's Emissions Trading System[3] known as EU ETS is used as a model it is a system that employs the use of the cap-and-trade system to put a limit on emission ceilings but competes for flexibility through the trading of allowances.

Globally bodies like the Japanese government have put statutes that require companies to declare their respective carbon footprints. In India energy Conservation Act[4] set norms for the industries to expand the energy efficiency and decrease the emitters. The now-defunct regulatory frameworks are important in establishing contentious legal standards for compliance as set by international obligations.

2. The International Agreements

Climate change is a world issue, so international cooperation becomes unavoidable to overcome this problem. One of the significant contributions in this regard is made by UNFCCC[5] towards initiating the Paris Agreement by which commitment was taken up from countries to keep further global average temperature

rise, well below 2 degrees Celsius above pre-industrial levels and pursue efforts for limiting the increase in a global average temperature to 1.5 degree Celsius End.

In addition to the stated goals, the objectives of international agreements are to promote the transfer of technologies. However, their implementation is a challenge since the priorities at the national level differ, and there are no strong mechanisms to enforce them. It is now clear that commitments need to be matched by monitoring and accountability machinery to confirm that these goals will be translated into action.

3. Market-Solutions and Financial Reforms

Voluntary measures of policy instruments, for example, carbon pricing is a cost-effective sustainable method of reducing carbon emissions. The EU ETS is a distinct cap and trade system, where an organization is given a limit of emissions but is allowed to decide how to meet this limit as this will cost them money.

4. A Renewables Policy Update

Renewable energy has become the core of most mitigation plans. We have observed that policy measures like tax credits, subsidies, and the feed-in tariff have a favorable impact on higher renewables use in countries like Germany[6] and China[7].

It also requires legal frameworks for grid modernization and energy storage, so that the combination with renewable energy systems that already exist is possible. Enhancing and expanding these frameworks might help to catalyze global change in the direction of more efficient energy systems, including cleaner energies.

Adaptation Strategies

1. Improving the resilience of infrastructure is the aim of this paper.

- Since many effects of climate change are inevitable, understanding how to adapt to those changes is crucial to lessen the economic effects that climate change brings. The legal instruments concerning climate change adaptation for infrastructure are another factor, including flood-proof housing, appropriate planning and design of cities and towns, and adaptation of transport infrastructures among others.
- For example, the Netherlands ‘’Room for the River’’[8] is a strategy where legal requirements are accompanied by engineering tools to address the problems of floods and at the

same time protect the environment/ ecosystems. National adaptation plans including Bangladesh's Climate Change Strategy and Action Plan (BCCSAP) are good examples of how resilience can be taken into development in the country.

2. Community Justice Legal Systems

People's participation is vital in the formulation of various adaptation measures. When legal instruments acknowledge IK and LG, communities achieve capable solutions to challenges that respond to their threats.

For instance, climate risk management can be learned from previous practices of water resources management and sustainable agriculture.

Combined Effect of Mitigation and Adaptation

Climate change has for a long time been considered as best tackled through a combination of two strategies that are traditionally understood as having differing methodologies: mitigation and adaptation. However, what distinguishes them is often manifested in the operational level of the strategies whereby numerous intersections are enhancing the potential to achieve efficiency gains and effects.

Towards the Creation of System with Multiple Purposes: Retrieved from the Integrated Legal Strategies

Because of the interdependence of mitigation and adaptation, there is a shared legal regime when the two goals are considered together. Energy policies that encourage the use of renewable energy sources viz solar and wind do not only cut down on carbon emissions but also bring about a reduction of the community's exposure to the effects of extreme weather events, which may lead to disruption of power supply. Likewise, infrastructure mainly intended for the climate effects may contain components such as a feature efficient in emission production or a structure featuring an energy-efficient material.

IT and Innovation Role

Technological development extends the measure between risk reduction and accommodation. Energy technologies such as the smart grid[9] shrinks greenhouse gas emissions (mitigation) while at the same time increasing the resistance of energy systems to climate events (adaptation). In the same way, enhanced farming techniques

like precision farming cuts emissions from fertilizers while improving crop's ability to withstand droughts and floods.

It will make it possible for the policymakers to align measures in one domain hence avoiding negative impacts on the other.

Economic and Policy Gains from Integration

Coordinated strategies of mitigation and adaptation are economically and politically efficient. There is coordination hence less duplication so that available funds and manpower are effectively used. For instance, funding a coastal protection project that would also feature renewable power solutions benefits two growing concerns; the increasing threats of sea levels and the concern for efficient energy resources.

In addition, explicit mainstreaming of mitigation and adaptation goals within national and international legal systems enhances policy consistency referring to combined actions of different sectors towards climate goals. The Global Commission on Adaptation[10] has pushed for the concept of "adaptive mitigation", stating that it's possible to solve both problems at the same time – that is, to design measures that will serve both to reduce emissions and to build the physical capacity of vulnerable nations to cope with the impacts of climate change.

Judicial Activism and Legal Accountability

Governance of climate change has now become a judicial concern as courts across the globe are assuming the role of implementing governmental and corporate climate policies. Courts have acted in a revolutionary way to ensure the deciders are answering for climate change, translating constitutional and human rights principles into calls for enhanced climate policy implementation, and providing judicial authorities to encourage more progress.

Cases that have shaped Climate Liability

This paper carbon controls as enforced through landmark legal cases illustrates how judicial processes could get around the problem of climate change.

Urgenda Foundation v. State of the Netherlands (2015)[11]:

In this case, the Dutch Supreme Court mandated the government to cut at least 25% of GH mid-nineteenth by 2020 since their rights to life and well-being as envisaged under the European Convention on Human Rights will otherwise be infringed. This

decision was a landmark in climate change litigation not only because it affirmed that governments have legal obligations to their citizens as far as climate change is concerned but also because it was a decision that was arrived at by the court rather than one expected of the government that was sued.

Leghari v. Federation of Pakistan (2015)[12]:

A farmer in Pakistan recently challenged the government claiming that its neglect to implement climate change policy misused the petitioner's constitutional rights. In his case, the Lahore High Court passed judgment in his favour and directed the federal government to move immediately and frame the Climate Change Commission to monitor the physical execution. This case also showed that they are hoping for courts, mainly in developing countries, to apply the laws to force governments into action on climate change.

Juliana v. United States (2015)[13]:

This was known as the 'CHILDREN'S TRUST' case, whereby young plaintiffs sought on grounds of climate change as a violation of their constitutional right to life liberties, and property. Although the case experienced procedural challenges, it introduced the notion of Intergenerational Equity in climate change to the international community including the rights to climate of future generations.

These examples show how legal action can be used to place greater pressure on governments to enhance their climate policies so that stated objectives are met through tangible actions.

Judiciary as a Catalyst for Policy Reform

Case law acts as a stimulus to legislative and executive responses to climate change, thereby enhancing climate regulation. For example, the Urgenda ruling forced the Netherlands to speed up emissions parameters decrease and the shift to the usage of renewable energy sources. Likewise, even the Leghari case established institutions for climate change responsiveness in Pakistan; an example of how judicial activism can alter organizational policy.

Challenges in Environmental Law

Environmental law is central to responding to climate change although its effectiveness is constantly hampered by structural factors. These are such as enforcement measures, finances,

fragmented legal structure, and equity as well as justice issues. Knowledge of and action towards these barriers are crucial in enhancing the legal backlash to climate change globally.

1. Enforcement Gaps

In this regard, enforcement has become one of the largest impediments to the implementation of environmental law. There are hundreds of laws in force in various countries and most of the developing countries lack resources to enforce them. For instance, multiple countries have signed and declared voluntary national emission reduction targets under the Paris Accord, but ineffectual compliance frameworks mitigate their implementation. But this is an even bigger problem in developing nations where other matters like opening up economies and eradicating poverty overshadow environmental conservation.

To fill enforcement gaps essential work capacity building is needed. It is also imperative for international collaboration since transnational efforts will be able to furnish technical and financial support to areas that lack adequate raw materials.

2. Financial Constraints

Access to capital is rated as the main constraint to combating climate change. Both mitigation and adaptation require significant amounts of resources to finance infrastructure and facilities, as well as support science and quality. Nonetheless, they also brought similar or worse impacts that many nations, especially developing countries – the most affected by climate impacts – cannot afford to give effect to these measures.

From the analysis, it is clear that there is no single solution to the problem of financial constraints as the following strategies are recommended for government consideration. Redirecting money from incompetent industries such as fossil fuel to renewable energy industries creates an opportunity for efficient funding of sustainable projects. Moreover, there are new trends in climate finance known as debt swaps for climate and climate insurance that helped those vulnerable countries financially.

3. Fragmented Legal Systems

This is an essential trouble with international climate governance in this version of the fragmented international legal system. Environmental questions are global in most cases, but legal systems are disjointed and incoherent. No coordination of this kind

undermines the strength of international treaties and adds roadblocks to concerted climate action.

This is why it is important for the legal gender framework to be aligned and to consider the most effective way of associating this fragmentation. This, in turn, leans towards national laws, thus the necessity of harmonizing national laws with international agreements and also having policy consistency in different sectors. That is, multilateral institutions must offer a forum to discuss the merits (or demerits) of establishing common goals and indicators.

4. Equity and Justice Concerns

Climate change finds its impacts, as we know, where there are poor, vulnerable and marginalized people, so it plays the justice question. Climate change is being suffered by poor people, original inhabitants, and inhabitants of small islands, and they are barely emitting greenhouse gases.

Recommendations

1. Strengthen Enforcement

This is a political fact that Governments should be able to ensure effective monitoring and reporting enforcement. As for international tools, there is no equivalent of the Paris Accord on strengthening mechanisms behind such agreements in terms of whether nations or companies are held accountable.

2. Promote Integrated Strategies

Connecting the mitigation and adaptation activities and efforts with those of the integrated legal systems can enable the resultant benefits to reach their full potential. Such targets include obligations regarding the supply of energy from renewable sources and the construction of eco-friendly installations.

Conclusion

Environmental law is central and has a varied function in managing the two climate change objectives of mitigation and adaptation, which are foundational components of sustainable development. Despite the present qualitative research focus of this paper is to find out how and to what extent legal systems can make real changes through the study of the regulation and judicial enforcement and awareness and participation of the communities have brought understanding about the issue. A treatise on all types of legal instruments employed globally in the fight against climate change and its effects, the book delves into many international

conventions including the Paris Agreement and domestic and municipal laws. Here, regulatory enforcement experiences severe shortcomings, especially in the context of developing nations, and as such restricts the effectiveness of these endeavors. This makes it difficult for other large-scale mitigation and adaptation affecting the nations, particularly the developing nations to be financed. Equity and justice issues constitute another consideration because while the negative impacts of climate change will affect the least developed areas, they are the least emitters. Climate laws require to be backed with sound compliance instruments which must be set and developed, while sources of resources should be augmented through mechanisms such as green bonds and climate funds. As highlighted above it is clear that properly synchronized approaches of mitigation adaption will go far in aiding the achievement of the very VRC, furthermore, the depicted governance structures require the imposition of Indigenous persons for youths. Environmental law cannot simply be viewed as just another layer of legal rules; it is the dawn of a vision for the world and humans. Under the circumstances, the global community can support the alterations to the existing configurations and contribute to the real potential of the legal systems in terms of helping to construct climate resilience for ecosystems, economies, and societies of the future.

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Bridging The Equality Gap: A Comparative Analysis of LGBTQI+ Rights in India and the Netherlands

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Abstract

This paper compares the current state of the rights for the LGBTQI+ community in India and the Netherlands also with the purpose of sharing the findings so that more comprehensive and concrete suggestions for further rights enhancements for the represented community in India can be provided. Even though the Netherlands is synonymous with progressive policies regarding SSM, beginning with SSM legalization, India, on the other hand, only recently has de-penalized homosexuality in the 2018 Supreme Court verdict of Navtej Singh Johar v. Union of India. The paper compares the two countries through aspects such as same sex marriages, anti-discrimination legislation and adoptions. It also looks at the current social norms and issues that surround the lives of every member in the LGBTQI+ community in the two countries. By comparing and distinguishing both elements, the paper highlights the essential aspects that should be developed in India, following practical proposals for increasing equality. Furthermore, the paper also has the summary of the analysis of the Transgender Persons (Protection of Rights) Act, 2019[1], along with identification of benefits derived, and recommendations for the improvement of the law. The observation of the trends in the present paper hopes to aid future policy approaches as well as inclusion of LGBTQI+ rights in India.

Keywords: LGBTQI+ Rights, Legislative Framework, Equality, Inclusivity, Societal and Legal Insights

Introduction

Today, the LBGTQI+ movement has taken its long strides across the world with countries of the world embracing the rights of

the LGBTQI+ individuals over the last few decades. But even on these fronts, differences persist by countries indicating both the historical and cultural as well as political stance of the whole country.

To try to understand the state of LGBTQI+ rights in the selected countries and how their approaches differ, this paper draws comparisons between India and the Netherlands. Currently the Netherlands is recognized as one of the leaders in the protection of lesbian, gay, bisexual, transsexual, queer, intersex and all other members of the LGBTQI+ community since it was the first country to legalize same sex marriage in 2001 while having apparently stable legal guarantees for LGBTQI+ people. India's in its path relatively less and has not been as straight forward. India legalized same sex relations in 2018 but the discrimination in laws is still prevalent and social acceptances are changing. Differences in these two countries offer useful lessons on learning from different legal rules and approaches to the LGBTQI+ issue. This examination not only identified weaknesses in India but also considers how to enhance the situation for LGBTQI+ people where India's policies are similar to other nations.

Purpose and Scope

The main purpose of this research is to compare and contrast the current state of sexuality and gender minorities in India and the Netherlands to provide useful lessons which may help reform LGBTQI+ rights in India in the future. To this end, this paper will compare and contrast the two countries, with a focus on the major legal provisions that affect homosexuality, the perceptions of society towards gays and lesbians, and the major issues affecting the homosexuals in those countries with a view of drawing the lessons that India can learn to make the society friendly towards the homosexuals[2]. On, this account, the study aims to explore how progressive legislative policies that exist in Netherlands regarding same sex marriage, anti-discrimination and rights to adopt children can be used to make similar policies in India to fill gaps in equality and promote the rights of the trapped LGBTQI+ within the socio-cultural context of the Indian society.

The current study applies a comparative analysis approach since it aims to analyze the differences and similarities in the protection of the rights belonging to the LGBTQI+ community

lawfully in both India and the Netherlands, for this reason, relevant legislative enactments, cases, reports, articles, and publications belonging to certified organisations and Non-governmental organisations that advocate for the protection of the rights of the LGBTQ + people have been closely examined with the aim of gaining richer and detailed data Some of the legislations depend on certain legal cases like Navtej Singh Johar v. Union of India decision that removed criminalization of homosexuality in India and critical Dutch legislation such as legalizing same-sex marriage in the year 2001 has found a place for the study[3]. The research also engages in policy analysis, analyzing India's Transgender Persons (Protection of Rights) Act, 2019 and comparing it with the Dutch policies to determine the gaps in policy that protect transgender persons.

Historical and Legal Background

Current issues of the Indians in the Netherlands are cultural, political, and social, in part shaped by the broad contexts of Indian and Dutch queer rights. The Netherlands remains at a front line in the fight for the rights of the LGBTQI+ community[4]; In the same year, 2001, the year that saw the beginning of the enactment of same sex marriage laws globally, the Netherlands was the first country to pass that particular law. This was one of the steps in a string of progressive human rights actions by the Dutch government; as they have extended anti-discrimination protection to the LGBTQI+ community in employment, housing and public spheres.

India's progress has been a bit smoother but not as smooth as I assumed, considering the fact that its cardinal values, religion, and laws are different from those of the United States of America. Gay and lesbians could be prosecuted under Section 377 of the Indian Penal Code[5] inherited from British rule that outlawed "gross indecency" between members of the same sex. Nevertheless, sexual orientation was only treated as a protected ground for discrimination in 2018 in the case of 'Navtej Singh Johar v. Union of India[6] Supreme Court have delivered a verdict that has effectively overturned Section 377 to a great extent to propel the LGBTQI+ rights in India. Although this decision legalized same sex relations, other more encompassing rights such as marriage, adoption and non-discrimination remain unheard of.

The histories of LGBTQI+ rights in the two countries expose where the Netherlands strove to make legislative strides forward

while India has garnered change through the courts reluctantly and piecemeal, there remain potential for future improvement.

Legal Insights

Same sex marriage

Amid the Dutch culture, same-sex marriage has been legalized from the year 2001 making it the first country in the world to call for marriage equality[7]. Today Dutch legislation recognizes same-sex marriages and partnerships as fully equal to opposite sex civil unions entailing all Family Code rights and duties, including adoption, joint inheritance, taxation, and medical proxy. The initial resistance came from conservative political and religious organizations but progressive changes in the last few years influenced most people resulting in high public approval that informed the enactment of the legislation. It was very interesting to compare CTA people's advocacy of same-sex marriage rights with the situation in India where same-sex marriage is still illegal[8]. There has been a call for marriage equality following the 2018 decriminalization of same-sex relations, however, there is a lot of social and political backlash. So far, the Indian government has defied various pressures to liberalise, giving cultural and religious excuses in most cases[9]. But again a number of petitions of marriage equality activists have taken the issue to the Indian Supreme court where the argument is made that the non-recognition of same sex marriage is a violation of equality and dignity provisions of the constitution.

Anti-Discrimination Laws

Netherlands has very good outlaw against discrimination on the ground of sexual orientation and gender identity[10]. From 1994, the Netherlands actively ensured labor market and education protection for gay, lesbian, bisexual, and trans people from discriminations as well as from accessing goods and services[11]. The Netherlands' Equal Treatment Act and subsequent legislation restrict discrimination based on sexual orientation and gender identity as well as providing equal rights to treatment and accommodation and access to basic services such as accommodation and health care. Measures against such discriminations are strong, whereby the offended person can use complaints with the Netherlands Institute for Human Rights or in court. While compensation or other related legal protections against discrimination are still weak in India for the homosexual people. While the 2018 Navtej Singh Johar Supreme

Court judgement repealed section 377 that criminalized same sex relations, there is still little legal backing against discrimination of people based on their sexual orientation[12]. Indian constitution grants equality and non-discrimination but inclusive has not been stretched to cover sexual Orientation or gender identity in majority organizations. LGBTQI+ also experiences discrimination at the workplace, limited access to health care and housing discrimination in most instances the victims cannot seek redress in the court of law. While some of the state governments have enacted provisions against Discrimination on grounds of gender identity, there is still lack of federal laws.

Adoption Rights

Under Dutch law same-sex couples can legally adopt both within the country and from other countries proving that Dutch people support equal rights when it comes to families. Gays and lesbians have the same legal recognitions as other couples and adoption agencies may not legally discriminate based on orientation. Concerns are, however, only present in the international adoption since there are nations that will not allow adoption by LGBTQI+ individuals. South Asia, including India, does not allow most rights to lesbians, gays, bisexual, transsexuals, and queer people to adopt children. Currently, single gender identity individuals enjoy adoption rights but for gay couples, they cannot jointly adopt because enrolled Indian law fails to recognize gay/lesbian/bisexual/trans persons consortium as family. This is an obvious constraint particularly to the LGBTQI+ families in as much as it denies their children a legal benchmark owing to membership to this community.

Transgender Persons (Protection of Rights) Act, 2019

In India the parliament has enacted the "Transgender Persons (Protection of Rights) Act, 2019" and it could be viewed as progressive step in addressing the rights of the transexual people. It outlaws discrimination in educational institutions, the workplace, hospitals and other facilities, the social services, and access to, and provision of, goods and services[13]; as well as the right to be free to choose one's gender identity and expression, which means one can be male, female or transgender. Still, there are multiple criticism that has been received by this act.

A clause that may have raised much controversy seeks to compel a 'transgender' person to obtain a certificate of identity

through a district magistrate, the individual who wants a change must under go a gender reassignment surgery to get a revised certificate. People's rights to self-identification are violated, and they face invasive scrutiny, critics point out. Also, there is poor enforcement of laws as a result the Act offers no serious protection measures and trans sex workers loose their jobs despite this new law protecting them.

The Act also does not contain solutions to crucial matters concerning reservation in education as well as employment, social security measures, and treatment for Gender dysphoria. Though it recognizes the importance of such provisions, there has been an unequal distribution of the implementation, and the community prejudice is still a factor today.

Societal Perspective

On the Dutch culture, general perception towards the members of the LGBTA community is perceived to be liberal and acceptive due to high acceptance. This can be attributed to the freedoms Dutch culture offers since it there is freedom, equality, and tolerances for the gays and lesbians in Netherlands. Role of religion in Netherlands policy making is comparatively subdued and even if some sects within religious fold may frown at lifestyles of LGBTQI+ they do not influence social acceptance[14]. The legal system, and representation of the queer community ensures the queer politics have become quite visible in Dutch society and mainstream society, education, and media are crucial agents in fighting prejudice. LGBTQI+ issues are brought to school as early as in curricula to encourage lengthy tolerance, and social media also help in this aspect as well as the efforts of organizations such as COC Netherlands[15].

Finally, Indian people have much more diverse perception about this phenomenon because their perception is influenced by cultural, religious and historical aspects which are rooted deeply in the Indians' sense. Most Indian societies consider homosexuality and bisexuality as shameful and an abnormality because the nation has subscribed to the traditional and religious norms[16]. Inter-religious communities enhance society's rejection of homosexuality due to several religions, all having rigid fundamental beliefs about human sexuality. However, the attitude has been slow to change and though it remains prevalent in rural areas young people in cities are now

slowly embracing equality for LGBTQI+ individuals. Media of India and Hindi film industry has come up with different images of the gay and other members of the third gender and is breaking the stereotypical mindset of the society incrementally. Legal and social acceptance is less formalized here than in the Netherlands; however, educational and advocacy non-profit organizations, such as Naz Foundation and Humsafar Trust are emerging to change society[17].

Challenges Faced At Individual Level

There is a marked difference of the opportunities as well as the experiences that the two different groups of the same community get to have due to the legal and cultural systems in place in the two countries respectively. Discrimination and Stigma are present though less pronounced than in the other countries in the world. LGBTQI+ people can still experience discrimination especially as they interact with society from mainly the conservative culture and most religious associations. One example is job and social acceptance discrimination where Transgendered people like the Sali's family face challenges but Dutch anti discriminating laws are willing to help. Generally, inclusive care especially in healthcare is good but there are few areas where there are niches in mental health care in the context of the Queer community.

The difficulties are even greater in India, owing to weak legislation and restrictive social culture. LGBTQI+ are variously discriminated against for employment, housing or use of services and are relatively protected against discrimination. Religious bigotry and traditional family norms combine to give the LGBTQI+ population a raw deal in the social realm, which causes mental health diseases. They also have restricted access to health care; he further pointed out that many of them experience prejudice and / or lack of acceptance from physicians and other attendees in healthcare facilities. More so, tur tensions arise because transgender individuals are yet to enjoy legal protection and are socially ostracized despite the Transgender Persons (Protection of Rights) Act 2019.

Now both countries have challenges, but the issues are more extensive and consequential in India as the LGBTQI+ people suffer from stigma's legal and structural barriers.

KEY DIFFERENCES AND INSIGHTS IN INDIA

Licensing, social and political disparity of the rights of the LGBTQI+ community between India and the Netherlands are

primarily in the scope, the degree and type of the protection, acceptance and support systems for the community by the state. The Netherlands has strong laws on matters concerning same sex marriage, adoption and anti-discrimination and gender affirmation laws. The mentioned legal situation together with high social approval leads to the formation of tolerant society, where members of the LGBTQI+ can be equal in most spheres. COC Netherlands and other organisations have worked hard to ensure that education, the media, and general society continues to support the acceptance of LGBTQI+ rights in Dutch society.

On the other hand, the rights of the LGBTQI+ population in India are the least realized. While same sex relations were decriminalised in 2018, there is no legal affinity for same sex couples and families and protections against discrimination are scant. While LGBT organisations exist in Zimbabwe, social support structures exist in their infancy stages and there is relatively low sensitisation of the public on LGBT matters.

Some areas where India could improve in with the help of Dutch approach: Firstly, the country can enact generic anti-discrimination laws with LGBTQI+ as a landmark; secondly increased recognition of support service; thirdly increased visibility of queer people in media and text books. Concerning legal legislation reforms, it is needed to accredit the association of the members of the LGBTQI+ and grant the rights on adoption, and the social task might involve the preparation of schools for acceptance of the community from the childhood. Using the above-stated steps, India can fashion out a society that is more sensitive to the needs of the lesbian, gay, bisexual, transsexual, and queer persons and more tolerant of them.

Future Recommendations

In this section, as specific policy and legal recommendations to enhance the rights of sexual minorities in India, the Dutch model can be adopted with some modifications with respect to the Indian culture and society.

Legalization of Same-Sex Marriage: India could start by offering millions full recognition of same-sex civil unions and marriages, equal access to property, tax and medical treatment power of attorney. Knowing about these partnerships would help to legalize

and increase social acceptance of members of the LGBTQI+ community.

Anti-Discrimination Policies: Thus, it has to be emphasized that adopting a national anti-discrimination act including sexual orientation and gender identity is necessary. It is necessary to pass this law to guarantee protection at work, accommodation, healthcare, school and all the facilities and services a person might require. Having an enforcement mechanism would also protect the interest of the homosexuals and other LGBTQI+ persons in case discrimination is experienced[17].

Adoption Rights: Permission to allow same-sex couple adoption would be a recognition to the gay families and equal importance of the children as well. This reform should be followed by awareness that case gay and trans people are capable to adopt children and there is nothing shameful in that[18].

Inclusive Classroom Practises

LGBTQI+ protested that for them to enjoy equal rights and opportunities Inclusive Education and Social Support are very vital. Including detailed and _queer-sensitive_ teaching content for each level of schooling means that both stereotyping and prejudice can be addressed in childhood. To this effort, training educators to design lesson environments that ensure that the classroom is safe for all students enhances the cause. In addition to education, numerous social support networks of LMIC's queer populations, including mental health, community organisations, and counselling services should be employed for supportive LGBTQ's who live with stigma and isolation from their peers and suffer from mental health problems. Both of these initiatives, together, can foster empowering environment that promotes the equality and social inclusion.

Conclusion

Therefore, this comparison shows that the status of the homosexuals in the Indian society and the legal provisions that recognize the rights of the sexuality and gender in India is to that of even to the minimum legal provisions that accept homosexuality. The Dutch are far more liberal then Indians and have sever cover on gay rights while Indian only recently repealed laws against same sex relationships[19]. This paper also stress on India to increase acceptance of same-sex marriage and pass appropriate anti- gay discrimination laws to fill these gaps. Therefore, in order to enhance the, it is to

develop the advancement of advocacy and move acts changes that inequality dignity and acceptance of LGBTQI+ in India and make it more comprehensive society[20].

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Insanity Defence: Whether a shield for Criminals?

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Abstract

The insanity defence has always been seen as a necessary evil in the legal system, it has strived to shield away the innocents from legal persecution if found to be of unsound mind. This research paper is aimed to explore the legal complexities associated with this as well as it's societal impact. By layman's terms this defence is taken up to enforce their argument of not being mentally capable to distinguish the apriority of the actions thus to be granted the shield from prosecution. It is also seen in the M Naghten Rule which necessitates the defendant to prove the mental incapacity at the time of offence. It helps to prevent the any person form being criminally liable in case they lack the capacity to distinguish right from wrong or its consequences.

Keywords: Insanity defence, unsound mind, public perception, liability, M'Naghten Rule.

Introduction

The defence of mental insanity have been in existence since the legal system in England and it was adopted as a way of pleading to reduced liability of offenders due to his mental disease. In the course of the years, having introduced the elements of English legal system into its own, India started to include this defence as well. In India, the insanity defence is often raised by defendants who are diagnosed with, or claim to be suffering from, mental conditions such as schizophrenia or other serious psychiatric illnesses. However, invoking this defence is far from straightforward. It requires the presentation of substantial and convincing evidence that the accused's mental condition at the time of the crime which impaired their ability to distinguish between right and wrong. This is a somewhat challenging work, as defence should prove the fact that severe mental disorder precluded the criminal responsibility of a defendant. The accused has to prove that their mental disorder did

play some substantial part in the crime and as such the defence is difficult to prove in court.

The basic question of responsibility that underpins the insanity offence is philosophically linked to responsibility and consistently envelopes basic orienting concepts of existence and human essence. The idea of liability presupposes that persons have a duty to answer for their conduct if they were not impaired by reason of mental disease. In this context, taking some one for a criminal responsibility that s/he has not performed or cannot perform because of the mental disorder is a very serious infringement of the individual rights as well as the Constitution of India. This principle of fairness and justice is particularly important when it comes down to due process of law that states that every person has a right to be heard or to defend them self through a proper legal process. Natural justice means that you should not be condemned without being given a chance to defend oneself in the courts of law- this is where the use of the signal consideration comes in since it makes legal fairness in the system.

The affirmative defence of legal insanity is an essential element of this principle, offering an exemption for individuals who, due to mental disorders, are unable to comprehend the nature of their actions or realize what they did was wrong at the time of commition. This defence acknowledges that an individual's mental condition can interfere with the ability to form the criminal intent (men's rea) required for criminal liability. It is widely accepted across legal systems around the world that when mental incapacity prevents an individual from fully understanding the consequences of their actions, they should not be held criminally responsible. This is well provided for in Section 84 of the Indian Penal Code (IPC), which deals with the problem of unsound mind, the requirements and steps in a plea of insanity in Indian courts[1].

But more recent tendencies evolving over the years are the elimination of insanity defence in some U.S. states themselves. Some states who had banned this defence completely such as Montana, Idaho, Kansas and Utah in which as reason they had stated that the defence is sometimes abused or is hard to use fairly.[2] This shift is rooted in controversy among professionals in a human practice of medicine, psychology, and law. Those against the abolition say that it fails to protect disabled persons with serious

mental health issues; those for the side arguing that it gives society a defendable criminal justice system that is more stable and accountable for its actions. Currently, it emerged at the core of a contentious topic on mental disorder and crime in relation to the dilemmas of justice and equity.

These issues bring into question the relationship between law, mental health and justice as well the notion that the insanity defence defends or erodes basic rights. As society continues to encounter with such issues the analyzation of whether to DRO or to continue with the insanity defence is one area of debate or contention. Lastly, the emergent discourse corresponds with the never-ending debate about the conflict between justice and the humanity of the legal system as legal systems all over the world are trying to find the place for the newly reconsidered concept of mental health and insanity defence in the sphere of crime and punishment.

Historical Perspective

Tracing its roots back to even three centuries back in English era since it was brought into recognition. Since then, there existed numerous tests to determine whether a person is insane or not such as the "Wild Beast Test', "The Insane Delusion Test" and "Test of capacity to determine right from wrong". These three tests laid the foundation for what came to be known as the Mc Naughten rule.

In 1843, the wood-turner hailing from Glasgow, Daniel McNaughten, shot and killed Edward Drummond, under his assumption that the one he shot was Sir Robert Peel. During the trial, evidence was presented to demonstrate that McNaughten had been under delusion, unable to separate his reality from fantasy. The case then went on to have seven more experts to argue on the issue that McNaughten was lunatic at the time of the crime. In response, the judge halted the trial, and the jury swiftly awarded a special verdict, bypassing the usual deliberation process[3]. Considering McNaughten's mental condition, he was committed to the Bethlem Hospital, a well-known institution for the mentally ill. After the trial, the House laid down five important principles which were subsequently titled as the McNaughten Rules for the exoneration of insanity defence mechanism.

These set of McNaughten Rules was a significant case in the criminal law and especially the way in which this defence of insanity was to be applied. These have been well appreciated and they

constitute the framework of most of the contemporary legal insanity defence especially in India. The rationale on which Section 84 of the IPC[4] Insanity defence of Indian law is based on McNaughten rules. This particular case and its sequel form an important new trend in legal treatment of mental illness especially as to criminal responsibility or the insanity defence and harbours how the courts deal with a defendant who may be legally insane at the time a certain crime is committed.

Indian Perspective

Modern criminal law is based on the belief that individuals are just and morally responsible and not merely agents of harm. In order to held an individual criminally liable; two of these essential elements must be proven beyond reasonable doubt (a)actus reus and b (mens rea). Psychiatrists as well as medical practitioners may be brought in to assist the court to determine whether certain mental disorders affect the person's capacity to form the necessary intent to make them legally accountable.

Medical Insanity v Legal Insanity

Section 84 outlines the legal criteria for responsibility when a person with mental illness is accused of committing a crime. The IPC does not define "unsoundness of mind," although courts typically treat this term as synonymous with insanity. However, "insanity" itself lacks a clear definition, and it carries different meanings in different contexts, describing varying levels of mental disorders. Not every person with mental illness is excused from criminal liability. A person with any mental illness is classified as "medically insane," but on the other hand "legal insanity" means the individual's mental condition must also result in a loss of his/her reasoning power. Legal insanity refers to the state of mind at the time in which the crime was committed, separating it from various psychiatric diagnoses.

In layman's terms legal insanity therefore means that when a criminal act is committed, the person should be mentally ill and should also lack rationality. This is stated in Section 84 of the IPC, which says the person is incapable of understanding:

a. The nature of act
b. That they are doing something that is wrong or right.
c. Contrary to the law

So, even the twisted mindset, partial psychotic tendencies, constant inclinations or obsession as consequence of a mental illness does not help to avail protection under Section 84 IPC[5]

In a precedent case of Surendra Mishra v. In State of Jharkhand, the Hon'ble Supreme Court of India held that the person who wants to be discharged under Section 84 of IPC he has to discharge legal insanity not medical insanity[6]. The Court clarified that the term "unsoundness of mind" is not specifically defined in IPC, but it's generally treated as equal to insanity. However, "insanity" varies in meaning across contexts, and it represents different degrees of mental illness. Being mentally ill do not by default exempt a person from criminal responsibility. Just because the accused may seem conceited, eccentric, irritable, or their mental and physical health affects their intellect or emotions, or they engage in unusual acts, experience fits of insanity, have epileptic seizures, or exhibit abnormal behaviour, this is not enough to apply Section 84 of the IPC. In this case, despite the accused's mental instability before and after the incident, the court found that it could not be concluded that the defendant was unaware of the nature of their actions at the time of the crime—whether those actions were wrong or unlawful. Consequently, the defence of insanity was denied. Likewise in another case, the defendant was proven to have been insane but was convicted because of what he did after the act including concealing the weapon, locking the door to escape arrest and fleeing. Such actions the court regarded as non-eliminative indications of guilt consciousness, thus, the vera dicta of the conviction.

As a shield for criminals

India also follows the same rule which is provided in section 84, IPC; However, it states when a person who is of unsound mind during the events of crime is not guilty of the offense. The following factors are critical to avail this defence:

The person must be having this disability at the time of incident.

Abuse of the Insanity Defence

Even though this defence was adapted to protect who are mentally ill. The human ingenuity had transformed it into an instrument of removing liability for repeat offenders.

Claiming False Mental Illness:

Individuals accused for serious/capital offences may forge pseudo mental illnesses as an effort to avoid a punishment.

Appropriate Defences in Violent Crimes:

It is taken up by repeated offenders who commit violent crimes as mean to escape the legal persecution.

Ambiguity in Legal Definitions: The term "unsoundness of mind" is not specifically defined under the IPC, the meaning given to this term in the case differs from one case to another. Often this leads to some abuses because individuals framed can make proper psychiatric evaluation to get an acquittal.

"Insanity as a Defence" by L.W. Keplinger describes the development of the insanity defence in legal systems, with emphasis on the M'Naghten Rule, which became a critical tool for understanding when a defendant could be exempt from criminal punishment because of their mental illness. Although Keplinger admits that this rule is essential for giving structure, he highlights some of its drawbacks, notably that it ignores the term's ambiguity, which makes its legal application even more difficult. On the one hand, it intends to safeguard society against criminals, while on the other, it seeks to stop the unfair punishment of people with mental illnesses. Without these changes, there is a risk of the defence being misused; either by allowing dangerous individuals to evade punishment or by wrongfully punishing those with mental disability does not justify the defence.[7]

Conclusion

Despite its virtuous purpose, the insanity plea has encountered substantial obstacles and reproaches. Scenarios such as Surendra Mishra v. State of Jharkhand[8] elucidate the legal endeavour to discern between therapeutic and lawful lunacy. Tribunals have consistently reiterated the necessity for respondents to establish lawful insanity, confirming that the plea is not exploited as a cover for illicit activities. Nevertheless, the inherent vagueness in expressions such as "unsoundness of intellect" frequently generates room for misapprehension and exploitation, resulting in a lack of standardization in judicial verdicts. The communal view of the insanity plea additionally convolutes its utilization. Occurrences of litigants simulating mental ailments to evade liability have nurtured doubt, eroding societal faith in the judiciary arrangement.

Concurrently, nullifying the plea, as exemplified in select U.S. regions, jeopardizes neglecting persons with acute mental ailments and conflicts with doctrines of empathy and rehabilitation fundamental to judiciary mechanisms globally. There is an urgent need to fix the gap between the psychiatric issues and judicial complexities. Strict mental evaluations and further legal aid can help to ensure the essence of this legal shield to be not lost on its true cause. By resolving the judicial frameworks around this and by constant monitoring of this pleas can help in safeguarding the mentally ill individuals and preserve public welfare at the same time.

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The Under Trials: A Game of Fate

Karan Sehijpal

Two years, eleven months, seventeen days, 11 sessions and 165 days in total is what it took four our constitution makers to draft the longest and the most comprehensive constitution in the world. The Indian constitution is considered to be the most well written constitution which was made after referring to every written and unwritten constitution present at that time. The only sole motive behind such a rigorous task was to ensure that the citizens of free and independent India can live without fear and whenever they feel violated, they can always open this legendary constitution and get justice for themselves. But today, after 74 years of our constitution, it is still a big question if we can completely rely on it or not.

When it comes to crimes and criminals, our constitution and the law of the land provides strict provisions to ensure that only the guilty are being sent to prison and there are proper system for appeals and to correct any error made by the trial court and to ensure that the wrong person is not behind the bars. But regardless of these provisions, there are many loopholes which are being neglected and most of the time, a person who is not declared guilty, is being sent to prison and are made to live there for a substantial amount of time.

With the advancement in time and technology and rise in the skill set of criminals, a change in the criminal law regime was the need of the hour. With the introduction of new criminal laws, it not only bought new hope but some level of uncertainty. This paper focuses on the uncertainty that is being faced by the prisoners inside the jails whose cases are still pending and they are not yet declared guilty. Will these new laws affect the lives of these under trials in any way? This is the question that this paper will try to answer at large.

Meeting the Under Trials

Before we go into the cause and effect of having under trials, it is very important to identify and understand who these under trials are. India is the largest democracy in the world along with having the highest population in the world. It is a no brainer that in such a society which includes different communities and religion, bureaucratic system has to be a comprehensive one but there will

always be room for biases and everyone is bound to have their own opinion. This obviously affects which community gets better treatment than others.

National Crime Records Bureau (NCRB) which is a government agency responsible for collecting every crime related data published their records on the under trial prisoners in 2022 which stated that 75.8% of the total prisoners in the Indian prisons are under trials. This implies that out of 100 accused persons being tried, almost 76 of them are sent to the jail before they are even declared guilty as compared to 26 in US as of 2019 data. This data alone is enough to observe the gap in justice delivery between a developed and a developing country. India is considered as a country with a strong judiciary and justice system but this data in no way reflects the same.[1]

Further in order to get the entire picture, it is important to understand the demographics of this data of under trials. Out of the total under trials, almost 60% are from six states alone namely Uttar pradesh, Bihar, Maharashtra, Madhya Pradesh, Punjab and West Bengal. Four out of these six states come in the list of top 10 states with highest crime rates in India, thus this is a factor which contributes to higher under trial convictions. Furthermore, it is interesting to find out that almost 20% of the undertrials belongs to the Muslim community whole more than 20% are scheduled caste. This might strike as discrimination at one glance[2]

But if we further try to understand which community has the highest crime rate in the country, then Muslim community will be on the top of the list. Thus, we can deduce that instead of wide spread biases against the Muslim community in the bureaucracy of the country, it is possible that neglect towards the Muslim community in general by the law makers and policy makers of the country might have lead to a higher number of crimes being committed by the Muslims and thus this might be the reason for them being in the top of the under trial convictions.

The youngsters of a country are its biggest asset and India is no exception to it. India is a developing country and the contribution of the country's youngsters is a very big factor in deciding the fate of the nation. Thus, it is very important to analyze the rate of under trial convictions of youth in India. According to the NCRB reveals that close to half of the under trial prisoners fall under the category of

youth. 49.7% are in the age group of 18- 30 years. This is a 3% increase since 2016 data. This is an alarmingly high rate of youth convictions. Development of our country can be hampered if such a huge number of youngsters are
in the jail and that too who are not convicted yet.

The India Prison System

A correctional system is one of the essentials for any country as crimes will happen in any society. Since crime is an obvious element of the society, it is important to ensure that there is a well established and structured prison system which is efficient enough to hold the prisoners of any nation. A prison not only holds the convict till their stipulated time but it has to work as a rehabilitation centre which has to ensure that the person who enters the prison, goes back as a different human who is capable to survive in the society peacefully and co habit with the fellow beings.

Sometimes we think that the only work of any prison is to keep the person behind the bars and punish them for their crimes. It is true that the prisons are supposed to do that but that is not the only task that a prison is supposed to do. Over the years, the concept of prisons has evolved a lot worldwide and instead of it being correlated to punishment, it is now being associated with reformation. Earlier, it was thought that a prison is a place where a person is just supposed to be tortured and regret about their acts so that out of fear of being inside the prison again, they refrain from committing such an act. But over the decades, with advancement in technology and mindset, the reformative side of the prison is emphasized upon and today, reformation is one of the biggest functions of any correctional system.

There are different definitions of a prison such as the Prisons Act, 1894 defines prison as any place which is used for detention of prisoners. Further the Prisons Act, 1900 excludes the jails and police lock ups from the ambit of prisons. On the other hand, internationally the prisons are defined as a place for the treatment of the convicted. But even though today the Indian prison system is more inclined towards a reformative approach, the ground realty is very much different. We follow an outdated legislation for prisons which only divides and segregates the prisions and dopes not give a well defined function or tasks that the prisions are supposed to adhere to. Even after continous tries by the judiciary to reform the

india prison system, there is some lapse in the implementation of the same.

Now, imagine doing nothing wrong and being false implicated in a case where you are innocent as a matter of fact, but still because of the laws and the system that we are in currently, going into a prision which is made for punishment for a time period which you will never get back even if paid money for. This will definitely create a sense of hatred towards the system which in result have an effect on you which is completely opposite to what a prison should have.

Therefore the 75% of undertrials who are in the prisons right now are going to have the same hatred for the system and the correctional system that will result in more people's faith getting lifted from our criminal justice system and this will eventually result in a rise in crime levels in large. Thus, along with ensure justice is delivered to the under trials, it is important to stabilize and upgrade our prison system to match the international guidelines and standards.[3]

The Old Regime

Earlier, not a very long time back, the Indian criminal system was governed by three important criminal legislations which were namely the Indian Penal Code, 1862 , the Code of Criminal Procedure, 1973 and the Indian Evidence Act. In a way all the three legislations were colonial in nature and even though they lasted for a long time, they were outdated in some sense. The police can detain any person for 24 hours before that person is produced before a competent magistrate. The police could use the 24 hours time to torture anyone into agreeing that they did something that never happened. This alone is enough for anyone to go through enough trauma, both mental and physical which can last for a lifetime.

Further to make things more complicated, comes a concept of "bail". The CrPC did not define the term bail but it did classify offences as bailable and non bailable offences. Offences which are less serious came under the former while crimes of more heinous nature came under the latter. But to define bail in the simplest way, it can be defined as a court order which granted an accused freedom from judicial or police custody while the case is under consideration upon some condition such as depositing any security with the court.

The jurisprudence that every person is innocent undtil proven guilty makes bail a right for an individual. Theoratically, bail is granted as a matter of right when the court is satisfied that the person has a permanent resident of a place and has good name in the society, that the accused is not at fly risk and that the accused will not tamper with the evidences and witnesses if granted bail. Thus, if any person fulfills these conditions, they are granted bail as a matter of right.

This bail system is discriminatory towards the poor as the bail is granted against some security which is usually monetary in nature such as depositing an FD with the court or a vehicle registered under their name along with a relative or a family member who acts as a surety for the accused. The rich might be able to furnish the bail amount but the poor might fail to do so.[4] Thus, even if the court thinks that the person can be granted bail, still that person cant come out of the prison because of failure in furnishing the bail bond. The evil of the bail system is that either the poor accused has to fall back on touts and professional sureties for providing bail or suffer pre-trial detention. Both these consequences are fraught with great hardship to the poor. In one case the poor accused is fleeced of his moneys by touts and professional sureties and sometimes has even to incur debts to make payment to them for securing his release; in the other he is deprived of his liberty without trial and conviction and this leads to grave consequences.[5]

In a very big landmark judgment of State of Rajasthan vs Balchand, the bench reminded us that the rule is "bail, not jail" which means that until and unless it is proved beyond reasonable doubt that the person if let free on bail will tamper with the case outcome or can abscond, a bail should not be denied on any other grounds.[6] The main objective behind bail is to lighten the burden on the prison administration by not keeping an additional prisoner and at the same time to ensure that the accused is still approachable by the court whenever required, but the real picture is very much different from theory. In reality, every criminal case, whether high profile or not, has to undergo the trial phase at the trial court or a districts and sessions court. As a matter of practice usually lower courts refrain from granting bail in a heinous case because of the fear of granting bail in a serious offence and thus usually accused

who are involved in a serious offence such as murder or rape do not easily get bail as the general rule of bail not jail stops applying here.

Under section 167(2) CrPC, bail is granted by 'default' if the investigating agency fails in investigating the case within 60 or 90 days (depending upon the seriousness of the offence) but it has to be noted that this default bail is not granted automatically but the accused has to make an application before the magistrate on this very ground and not on any merit or other fact of the case. But even if this is granted, the accused has already spend more than 2 months in the prison which is long enough for anyone to go through mental and physical torture, especially for someone who might turn out to be innocent by the end of the trial. Further to make things worse, under this section only the magistrate who might have no authority to try the particular case may allow the remand of the accused to the police for a maximum of 15 days in the name of investigation but in real life, instead of conducting a fair investigation, the police finds it comfortable to just torture the accused and make him accept things that he never did. Once the 15 days period is over, the police can again put an application before the same magistrate for another remand of 15 days and as a matter of practice, these applications by the investigating agencies are usually accepted and granted.

This period of 15 days, however, often was inadequate to conclude investigations, especially in complicated cases which required a longer and deeper investigation. This lack of time, led to a widespread practice wherein investigating officers would file preliminary chargesheets after the expiry of the remand period, and subsequently request the magistrate to postpone the commencement of trial and remand the accused under Section 344 of the 1898 Code for a further time. Till the final chargesheet was filed, under Section 344 of the 1898 Code the Magistrate could postpone the commencement of any enquiry or trial for any reasonable cause. The explanation to said Section 344 of the Old Code reads as follows – "If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand." This practice of filing "preliminary chargesheets" was first pointed out by the Law Commission of India in its Report No. 14 on Reforms of the Judicial Administration, wherein it was stated that in many cases, the accused persons,

without the filing of any detailed reports before the courts by the investigating authority, were languishing in jail for a prolonged period of time. It recommended that there existed an urgent need for a provision that provided for an appropriate time frame for the completion of an investigation while also safeguarding the personal liberty of the accused.[7]

Some of the provisions in the old criminal laws which are relevant here are as follows :-

- **Section 170 CRPC**
  Under this section if any case is forwarded to the magistrate, then there is no need for a bail application as if any case is registered under this section then it means that the prosecution does not need the accused and thus there is no need for his arrest and he is called merely for framing of charges.
- **Section 309 CRPC**
  Any delay on the part of court or prosecution for trail should be deprecated. Such a delay can be a ground of bail for undertrial prisoners. Sec. 309 (2) of the Cr.P.C. prohibits an adjournment when the witnesses are in attendance except for special reasons, which are to be recorded.
- **Section 204 & 209 CRPC**
  Issuing a warrant u/s, 204 of the Cr.P.C. may be an exception in which case the Magistrate will have to give reasons. Bail, in simple parlance means a release subject to the restrictions and conditions. A Magistrate can take a call even without an application for bail if he is inclined to do so.

It is clear from the analysis of these old laws that they were meant for the protection of accused but they also had certain loopholes which were necessary to ensure justice but could be misused in everyday practice against the accused and the accused were made to undergo pre trial detention for time period almost similar to the punishment that they would have gotten if they were proved guilty.

The Beginning of A New Criminal System

The three new criminal laws, the "Bharatiya Nyaya Sanhita," the "Bharatiya Nagarik Suraksha Sanhita," and the "Bharatiya Sakshya Adhiniyam," have replaced the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC), and the Indian Evidence Act respectively, effective from 1 July 2024[8]. BNSS replaced the

erstwhile Code of Criminal Procedure, 1973 (CrPC) as a part of the NDA government's programme of 'decolonising' criminal laws.

Undertrials are one of the two major categories of prison inmates. They are held in judicial custody until the trial court decides if they are guilty of the offences they are alleged to have committed. Convicts sentenced to varying jail terms depending upon the gravity of the offences constitute the second category. A small number of detenues sent to jail under preventive detention laws constitute a third category.

Depending upon the gravity of the crime(s) and the circumstances due to which they are unable to secure bail, undertrials languish in prison for different periods of time, ranging from a few months to several years.

With the implementation of these new laws, the Ministry of Home Affairs (MHA) has released an advisory to the state heads and the heads of prison facilities throughout the country to implement and apply section 47 of the BNSS which relates to under trials and this provision will also help in dealing with the issue of overcrowded prisons. According to this provision, undertrials who have completed at least one half of the maximum duration of imprisonment they would get if found guilty by a competent court, may be released on bail.

Further, undertrials who are first time-offenders and who have not been convicted of any offence in the past are eligible to be considered for release on a personal bond if they have languished in prison for at least one-third of the maximum period of punishment they may attract if found guilty.

The release of undertrials belonging to both categories is subject to certain conditions. However, offenders who are alleged to have committed offences punishable with the death sentence or life imprisonment are excluded from availing the benefit of Section 479.[9]

Thus from these provisions alone it can be deduced that these laws were made by keeping the undertrials into consideration and making sure that they get the desired justice.

Conclusion

A bail, as a matter of everyday practice will stay as a discretionary power of the courts and it is not wrong to say that whatever new provisions are made, if a judge has decided that he will not grant bail, then no law can be used to dictate otherwise but

at the same time it is very important to understand the conditions that these prisoners have to go through everyday. It is not wrong to keep a convicted person inside the prison but every individual who is going through pre trial detention should feel like a burden on the shoulders of the judiciary and the prison administration to ensure that they are attended as a priority and it is made sure that the justice that they deserve is delivered that too on time.

By keeping people inside the prisons when they are not yet declared as guilty should be a crime and offence in itself and it should be taken extra care by the judges of the courts of India no matter which level they are serving on to ensure that bail is granted whenever and wherever it is deemed right and whenever and wherever it is possible to grant it.

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Judicial Overreach: A Comparative Analysis Between India and the USA

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Abstract

This paper provides insight into the powers exercised by the judiciary in India and the USA, especially in analyzing judicial overreach. The term judicial overreach refers to when the judiciary exceeds the powers conferred by the constitutions and invades the powers of other bodies of executive and legislature. Simply, judicial activism changes its character and converts into judicial overreach. Both India and the USA are significant countries that are well-known for administering judicial activism. The courts in India exercise the power of judicial activism mainly through public interest litigation, with the courts evaluating the policies and actions of the administrative bodies. Also, in the USA, the court exercises these powers through the help of doctrines and principles, which have evolved through different interpretations by the court in various parts of time. However, this control of judicial activism in the hands of the court has often led to debates on the compliance of the principles of balance of power and separation of powers, which provides a clear distinction between the powers of different bodies. Also, it is argued that the judge's decisions are based on their own beliefs, often leading to room for biases. The major intent of the paper is to explore the evolution of judicial activism and provide a differentiation between judicial activism and judicial overreach. The paper also analyses the landmark cases significant to judicial activism and different doctrines in both countries while understanding the influence of judicial overreach in administration.

Keywords*: Judicial overreach, Judicial Activism, Separation of powers, Balance of power, Judicial Review*

Introduction

"There is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative,

the life and liberty of the subject would be exposed to arbitrary control; for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression."[1]

-Montesquieu

In India, the administrative and judicial functions are divided between three branches of the government, which are the Legislature, Executive, and Judiciary. The legislature is responsible for making law, the executive is accountable for implementing it, and the judiciary interprets it. This power sharing is safely guarded by the doctrine of separation of powers and a system of checks and balances by the Judiciary.[2] It means that when the branches are responsible for their powers, they should not overstep into or interfere in the matters of others. Therefore, it creates a compartment within which each of the branches can function.

The Supreme Court of India plays a dynamic role in dispensing cases to ensure the rights and freedom of its citizens. They serve as the essential pillar to shoulder the safeguarding of the constitutional rights entitled to the citizens by adhering to the principles that are mentioned under the constitution. However, the courts are also responsible for conducting a system of checks and balances in order to maintain a separation of powers exercised by each organ. This takes place in the name of judicial review, wherein the court would examine and evaluate each and every action taken by the executive and legislature. This power is conferred to the courts through the constitutional provision under Article 142 of the Indian constitution, which makes the court responsible for ensuring complete justice when a case is presented before it. The arbitrary or excess power in the hands of the executive is disregarded with the aid of articles 32 and 226, with the PILs and class action suits, which give scope for judicial activism also being vibrant.[3]

Concept of Judicial Activism and Judicial Overreach

The highest judicial authority in the country is responsible for being an active player in guarding the rights of the citizens. The Indian judiciary is responsible for revising the policies and laws articulated by the legislature and executive actions and orders passed by them, allowing the court to strike down any orders or acts repugnant to fundamental rights. This power of the court to exercise judicial review has enabled the court, at instances, to divert its focus

into guaranteeing that the executive and legislature function effectively and embrace the new societal changes by interpreting the existing laws extensively in order to address the concerns regarding prevailing in the social political and economic sphere.[4] In such instances, the legislature or the executive falling short of fulfilling such needs of the society would be guided by the judiciary to ascertain such rights by drafting guidelines or policies in the interest of citizens. It should also be taken into account that with the advent of technology over the years, a continuous transition of society has been in place. This would mean that it is imperative to keep an eye on the actions of both executive and legislature. However, it has paved the way for the courts to interfere with the functioning of the executive and legislature, very often concluding in a dispute between the three branches.

Furthermore, while exercising its powers of judicial review, the judiciary was prosecuted for overreaching its powers by entering into domains in which they are not authorized unreasonably and arbitrarily or managing affairs over which the other branches have control. The courts, in multiple cases, have invalidated the executive orders and decrees, taking one step into the domain of executive powers. In the same way, the legislature, which was also responsible for drafting policies and guidelines, saw an intervention of judicial powers that diminished the value of elected representatives, raising a menace in the governing system.

Indian Perspective

India is a democratic country that follows the doctrine of separation of powers in consonance with a system of checks and balances. The government doesn't follow a strict separation of powers, distinguishing between the three branches in a tightly packed compartment, but each checks into the other's actions to ensure that it doesn't encroach upon the powers of other branches.

Judicial review is an inseparable feature of the judiciary in India, with the constitution implicitly mentioning the review power of the high court and supreme court. There is no definition of the term judicial review given in the Indian constitution. Still, multiple articles in the Constitution allow for the court to exercise this power. Articles 13, 32, 226, and 142 are interpreted to ensure that the judiciary is entrusted with reviewing the validity of legislative and executive actions.[5] This ensures that if any such acts are violative of

the Constitution, they would be regarded as null and void, essentially leading to the exclusion of the invalid act.[6]

History

Pre-Constitution

The origin of judicial activism is dedicated to the case that was heard by the Allahabad High Court in the year 1893 when the defendant in the said case was unable to present himself in the court with the aid of a learned counsel due to financial incapacity.[7] The judge in this case was put in a dilemma as to refer only to the produced evidence and decide the case. In the absence of a counsel to represent the defendant, the judge decided that a case can be heard only when the parties to the case can present their sides. This was seen as a foundation for the process of evolution of judicial activism in India in the post-colonial period, changing the perception of courts to be proactive and clear nuances existing in the system.

Post-Constitution

After the adoption of the constitution in 1950, various actions associated with the functioning of the government were questioned, examining the provisions laid down in the constitution and the validity of the fundamental rights. For the next decade, significant cases that pointed to the irregular and arbitrary acts of the legislature and executive body received considerable attention. One such case would be the ***A. K Gopalan vs Union of India case***[8], wherein the court asserted that the role of the judiciary in examining and reviewing the actions of the legislature is substantial to the constitution of India. The court would deem any legislative act which contradicts the fundamental rights as invalid.[9]

In another landmark case of ***Keshavananda Bharati vs the State of Kerala***[10] The apex court of the country established the doctrine of basic structure and entrusted the legislature with the responsibility of not impeding the basic structure. Also, in the case ***of Golaknath vs State of Punjab***[11], the court also established that any actions undertaken by the legislature or executive should not hamper Part III of the Indian constitution, which provides fundamental rights.[12] Therefore, these cases became the backbone for the court to exercise the power of judicial activism in India.

Judicial Overreach

In India, while clenching the concept of judicial activism, it has posed a major threat to the doctrine of separation of powers. The

constant interference of the judiciary in the realm of the legislature to fill in the vacuums left by the legislative body or the invalidation of the executive orders or actions have inflicted the system of *trias politica*[13] Doctrine brings in the misconception that the executive and legislature are subservient to the judiciary.

In the Indian social and political sphere, there are various examples of judiciary encroachment into executive and legislative functions. The case of ***S.P. Gupta v. Union of India***[14], which is also known as the first judge case or collegium case, is a momentous case wherein the court was criticized for encroaching upon the powers of executive authority. The court, in this case, adopted a system of collegium, which consisted of judges appointing judges to the Supreme Court, thus crossing with the powers of the executive, who is responsible for framing such details. Moreover, the courts were hit with the major issue of framing a collegium system on their own interest, questioning the very notion of independence of the judiciary, making the judiciary unaccountable, and depleting transparency.

In a more similar case of ***Supreme Court Advocates o-Record Association and Anr. v. Union of India***[15]**,** the Supreme Court deemed the National Judicial Appointments Act of 2014, along with the 99th Constitutional Amendment Act of 2014, which was seen by the court as a threat to the doctrine of basic structure. The 99th Amendment Act of 2014 and NJAC 2014 Act proposed that the appointments to the Supreme Court and High Court judges positions be filled through a transparent system of commission, which would involve union ministers, ex-chief justice of India, and members nominated by the committee which involves prime ministers, and council of ministers.[16] The court opposed this proposition and deemed it null and void, upholding the earlier collegium system. This action of the judiciary to take decisions that are concerned with their functioning could be disastrous to the democratic nature of the country.

In another case, the ***Centre for Public Interest Litigation v. Union of India***,[17] regarded as a major intervention of the judiciary in the policy-making concerning the telecom industry, considered an executive prerogative. The court imposed restrictions on the telecom licenses issued in order to encourage a system of transparency and efficiency. This imposition of the court in the telecom sector was

denoted as the courts interfered with the executive role of policymaking, with the judgment inflicting serious economic instability.

USA

The USA follows a strict separation of powers, unlike India, which leaves each organ of the government in three separate compartments. However, the Supreme Court has significantly interfered with policy matters, adjudicating acts that have threatened the liberty and freedom enjoyed by the citizens.[18] The courts take up issues concerning social justice, unfair treatment of individuals' rights and freedom, etc., bringing in policies to negate the existence of any hurdles made implying upon the individuals. However, there has been immense criticism of the courts assuming the powers of legislature and executive under the title of safeguarding the interest of citizens.

History

The development of judicial activism as a concept was devoted to the USA when, in the case of ***Marbury v. Madiso***[19], the concept of judicial review was initially introduced. Indeed, this power of the court to review the policies and actions of the executive and legislature opened the path for the judiciary to function in a proactive way, leading to judicial activism. The case was noteworthy for delivering the court with a newer role of reviewing the policies presented by the legislature and the orders passed by the executive.[20] This was dedicated to ensuring that the executives and legislature would comply with the powers shared with the concerned body and are efficiently involved in fulfilling its responsibilities. The court would address any issues or concerns affecting the freedom and liberty of individuals that the legislature or executive has hampered or failed to fulfill. Therefore, it can assist in bringing social justice and clearing any nuances left by the other two bodies. However, this has led to the substantial weakening of the system of checks and balances, giving the judiciary a more prominent role than the executive and legislative bodies.

Judicial Overreach

The USA is also not devoid of the judiciaries' overarching intrusion into the matters managed by the executive and legislature, which is Congress. In the case of ***Roe v. Wade***[21]**,** which is considered a breakthrough in the constitutional law of the USA, the court

granted the right to abortion as a fundamental right under the right to privacy. However, the legislature is responsible for passing statutes in the USA through a democratic process involving debates and discussion. The court, in this case, accepted the right to abortion without any consensus with the legislature, circumventing the legislative body's powers and surpassing their constitutionally mandated capability.

In the case of ***Dobbs v. Jackson Women's Health Organization***[22]**,** the Supreme Court of the USA reversed the judgment given in the case of Roe vs Wade, deciding the abortion rights under privacy rights to be removed. The court entered into the domain of constitutional law, which is to be discussed by Congress and does not fall under the powers of the judiciary. The Supreme Court of the USA was seen repeatedly breaking their barriers and instructed it to under the constitution under the doctrine of separation of powers.

Bush v. Gore[23] is another case that is regarded as the court's exercise of its powers upon the powers of other bodies, namely the legislature and executive. The court, in the current case, held that the recount scheduled for the Florida presidential vote to be frozen as it is violative of the Equal Protection Clause. These matters are supposed to be deliberated in the presence of the body which is representing the people and not the judges who are unacquainted with the political sector. The court's interference in the powers of other bodies has inculcated a loss of trust and confidence in the elected body of Congress and executive authority. Courts holding power to shape policies and liberty to write down any orders as invalid lead to infringing constitutional provisions.

Need for Judicial Activism

The court in the modern world has assumed a more important role by being an active source entering into legislative and executive functions, not merely an interpreter of law but also included in passing decrees and guidelines for shaping societal needs, deeming laws and policies invalid. There are various reasons for this assumption of power by the court, such as the failure of the executive and legislature to act or function according to the powers entailed to it. The ineffectiveness and incapability of the courts have widely opened the door for arbitrariness and unjust treatment of individuals, leading to a loss of trust in the branches of the

government. In the absence of any policies or guidelines to protect the interests of individuals living in society, the courts would shift into a more dynamic role to fulfill such needs by interpreting laws as time requires it.

Critical Analysis

India and the USA are democratic countries with high regard for constitutional laws and different socio-political atmospheres. In India, judicial overreach is driven by the PIL, which allows the courts to intervene in matters of social, political and economic significance. In this instance, it is even suitable for the redressal of issues faced by the people. However, it deeply affects accountability and tackles the doctrine of separation of powers. In the aforementioned cases, it can be seen that the courts, in various instances, invaded the executive and legislative functions and are criticized for pushing the government into a corner.[24]

The concept of judicial overreach in the USA is different from the Indian concept of judicial activism, where it deals with the constitutional issues that can be seen in the cases mentioned earlier. The judiciary primarily interprets the laws as given in the constitution, but in the lack of provisions to address the issue at hand, the country then would act in the manner of the legislature to fill in the vacuums. Unlike in India, judicial overreach in the USA is driven by aspects affecting constitutional interpretations, while the Indian perspective regulates any such issues concerning social injustices or executive inefficiencies.

Although both countries have different impacts and causes upon the established system of governance, judicial overreach remains a serious threat to the doctrine of separation of powers and checks and balances.

The judicial legislation also entails that despite the existence of an elected body for the making of laws, a rather different branch undertakes a different function, constituting unelected members at the pinnacle and adjudicating the policies to be inscribed in society. This essentially vanishes the function of the legislative body and puts the judiciary in the upper hand where they would legislate and further interpret

Judicial Restraint

The judicial exercise of legislative powers and administrative controls has a significant impact on the doctrine of separation of

powers and maintains the power balance.[25] Any overreaching powers by either of the state's organs could cause severe injuries to government functions. To settle this growing concern, judicial restraint can be the major initiative to confine each body to its individual powers.

Judicial restraint provides a striking solution to the judicial overreach exercised by the judiciaries. Judicial restraint clearly deters the court from being the legislature by passing policies and taking administrative actions. The line of separation of powers is vital for the countries India and the USA, and this would restrict the court from entering into the executive and legislative prerogatives. The judiciary should respect the difference of powers exercised by the different branches and avoid overexercising its powers. The enabling factor of this principle is that it would restrict the court from acting upon the doctrine and principles coexisting with the statutes, disabling the judges from shifting towards a substantial legal interpretation.

Therefore, by adhering to this principle, the judiciary would be able to manifest its role as a protector of the rights and duties of individuals, strengthening its integrity, retraveling trust and confidence in the legislative body, and accountability of the executive branch.[26] Also, it creates a harmonious environment within which the three organs of the government can coexist, upholding democratic values and respecting the doctrine of separation of powers.

Conclusion

The paradox of judicial activism and judicial overreach is a strange premise in the political atmosphere in both countries. The need for equilibrium between the powers of the judiciary is imperative so as to conserve the trust and faith of people in the Indian system of governance. Overdependency on the judiciary should be minimized to reduce the confusion in the air about the application of separation of powers. The court has to be cautious while examining the executive order and limiting the legislative actions without impeding the balance.

The court should not drift away from its prime role as protector of rights and have to remain independent and reduce its intervention into other organs' functioning.

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Artificial Intelligence in India With Special Reference to the Legal Profession

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Abstract

In a tech-driven nation like India, where innovation opens to immense opportunities in various sectors, and Artificial Intelligence (AI) advancing with time is gaining importance in every domain, the integration of AI in the legal profession has molded how legal practitioners function in the present generation. There has been a drastic shift in how they analyze the data and conduct research. With this integration, accessibility, accuracy, and organization have been improved substantially. This paper discusses advancing and improving AI applications in the legal sector. It defines their impact on crucial methodologies like document review, legal research, anticipatory analytics, and decision support systems. It discovers the incorporation of AI, how it has revolutionized the legal profession, and the transference from traditional methods of legal practice. This paper examines the shift of AI from rudimentary automation tools to a high-tech interpretation of legal texts. Through an analysis, it aims to explore the projection of case outcomes towards supporting refined decisions. Ethical standards, data privacy & protection, and future AI integration implications relate to its strengths versus drawbacks. This paper examines the regulatory response to the increasing existence of AI in the Law, including the evolving standards and guidelines to balance innovation and accountability. To conclude, the paper delves its way ahead for AI in law toward a possible future with AI applications aiding legal practice and the potential of them altering, thereby also focusing on the importance of constant ethical and regulatory scrutiny.

Keywords: Artificial Intelligence (AI), Legal practitioners, Industry, Employment, Ethics

Introduction

"Success in creating AI would be the biggest event in human history. Unfortunately, it might also be the last unless we learn how to avoid the risks."[1]

Stephen Hawking

Artificial Intelligence (AI) is an incredible power of a system that analyses complex problems; it is dominating today's world in several ways, addressing the issues of the 21st century. It has become a part of daily life for the world, imposing a massive impact on human existence today; it is onerous to comprehend a world without it. The ability of AI to emulate or enhance human intellect, like reasoning, problem-solving, decision-making, and perception. These are accompanied by tremendous efficiency with complex algorithms and computational models. Artificial Intelligence is incorporated into every sector with specific algorithms, including healthcare, warfare, agriculture, etc.

It is the most gravitating field in computer science, with growing technology and research being a combination of not one but various fields. Legal AI could consequently be visualized and envisaged during the application of technologies like machine learning, legal robotics, speech recognition, natural language processing, image understanding, rule-based experts, neural networks, logic programming, artificial vision, machine learning, and neural networks relative to legal issues.AI in Law has shown incredible results in various applications like Case-based reasoning and document modeling.[2]

Artificial intelligence (AI) is linked to problem-solving in humans' daily lives. It is essential to protect the relationship between an individual and society, and it is necessary that there be remedies for that individual in case of violation of rights by AI applications. Artificial Intelligence (AI) shall be regarded as meaningless without strong security measures due to its easy accessibility.

Literature Review

To administer this multidimensional topic and ensure a deeper analysis, the researcher has conducted well-rounded research by reviewing several articles, journals, newspaper articles, and research papers to have a strong foundation and deeper understanding of the

paper. Like, the researcher examined the book chapter titled *"Cybersecurity, Artificial Intelligence, Data Protection & the Law."*[3] and discovered that legal practitioners and the legal industry are quite vigilant and cautious in adopting AI in totality in the processes, like how the use of AI in courtrooms is still limited and lays more emphasis on implementing semi-automated systems and digitalizing records.

The researcher then reviewed two other papers that are fairly comparable, titled *"Artificial Intelligence and Legal Profession."*[4] & *"Artificial Intelligence and Law*."[5] The researcher discovered that the paper touched upon the proponents of AI, who believe that artificial intelligence is a central part of the modern-day world, from voice-based assistants to highly advanced AI. Similarly, the researcher has conducted several such reviews to better understand the topic.

Research methodology and method

The researcher formulated the research methodology to be doctrinal, and using a secondary data collection method was settled considering the nature of the topic and the area where the research revolves. This was considered an appropriate method, considering that the topic revolves around the interface between AI and the legal industry. Given the abundance of pre-existing literature like regulatory frameworks, academic publications, and resources available for analysis, it culminated.

Artificial Intelligence and Law

What is artificial intelligence?

In simple terms, intelligence is the capacity to acquire knowledge and develop appropriate methods to solve problems and achieve the purpose relevant to the context in this ever-changing world.

Artificial Intelligence (AI) is a branch of computer science relating to developing systems that can match human intelligence and unravel complications. This is achieved by captivating several data and processing them to streamline and make it efficient in the future. A typical computer database occasionally requires human intervention to enhance the processes.

Further, it can be regarded as a pre-programmed plant robot that is flexible, accurate, and consistent.

According to John McCarthy, Artificial Intelligence (AI) is *"the Science and engineering of making intelligent machines where intelligence*[6] *is the computational part of the ability to achieve goals in the world."*[7] He was the first one who coined the term 'Artificial Intelligence' in 1955[8].

AI and Law

Artificial intelligence (AI) in the present world is emerging as a revolutionary tool for re-modeling industries and streamlining several tasks. AI helps in enhancing decision-making processes. The ascendancy in AI results from the availability of additional data and the possession of adequate computational infrastructure for analyzing the data. AI has outgrown its potential in the legal profession, transformation, practice, and access to justice. Like in Criminal Justice, AI is integrated to provide investigative assistance and automate decision-making processes.[9]

Considering that there are several ethical challenges, the role of AI is applied in various forms in the legal sphere. Several research tools are AI-driven and impose socio-economic implications and threats to employment.

Historical Development

History

Artificial Intelligence (AI) is considered a necessity, not mere technology or luxury. This invention can be traced back thousands of years to the ancient philosophers. The thinkers then created "automation." They were independent, mechanical, and required no human involvement. The earliest among them was around 400 BCE. This idea was then discussed in a workshop at Dartmouth College in the year 1956; John McCarthy and Marvin Minsky guided this workshop.[10]

Artificial Intelligence (AI) paved its way in India through the projects of Professor H.N. Mahabala in the 1960s. Later, in 1986, UNDP invented Knowledge-Based Computing Systems (KBCS) this year, leading to a more invested focus in AI. The US pioneered AI, but with its adoption, India is trying to strengthen its research and knowledge of AI. Then, in 1988, C-DAC, Centre for Development of Advanced Computing, was established to boost computing capabilities indirectly, leading to a roadmap to AI research.[11]

It was in the 2000s that the growth phase of AI started; IT companies like Wipro, Infosys, and TCS started to invest in Artificial

Intelligence (AI) research and development. The Digital India initiative in the year 2014-2015 by the Indian Government fueled AI's development and the importance of emerging technologies.[12]

In 2018, the NITI Aayog[13] released the National Strategy for Artificial Intelligence to outline the strategy and leverage of AI for growth and social inclusion. An initiative called "AI for All" was kick-started in 2018 by the National Strategy for Artificial Intelligence. This depicts India's interest in the development of AI. If the Government continues its efforts in this integration and advancement, then India can become the "*World AI Garage.*"[14]

In the 2020s, AI is evolving in the government and the private sector in synergy; the country is now becoming a hub for AI applications with growing smart cities like Hyderabad, Bangalore, Mumbai, and Delhi. Today, the country stands as a leader in making ethical and inclusive use of artificial intelligence (AI), which has the potential to tackle local and global challenges.

Comparative analysis

The once-so-traditional profession of lawyers is recently undergoing a seismic shift with the integration of Artificial Intelligence (AI). In this era, Artificial Intelligence (AI) is becoming the nucleus of the legal sphere and is revolutionizing with time. Around the world, different legal systems are assimilating this integration at different rates, paving new ways to deliver justice and continue legal practice. Understanding the various ways of its application offers visions of its best practices and the difficulties in its implementation in this environment, reflecting on the diverse priorities and societal needs.

Vietnam

In Vietnam, technology is slowly being transformed into judicial systems; it did so by passing the Law on Cybersecurity to protect national security and maintain public order. AI applications are becoming prevalent in the legal sector to improve efficiency; the Vietnamese legal profession's primary focus is combating cybercrime using AI to address digital threats, privacy concerns, and ethical norms. Challenges in this integration still abound, like data privacy, moral concerns, and lack of comprehensive legal control. Vietnam is at a primitive stage compared to developed countries like the UK and the US.[15]

Singapore

In Singapore, the courts have been pioneers in embracing Artificial Intelligence (AI) to the rapidity of judicial efficiency and its availability. In Singapore, the primary focus lies on Online Dispute Resolution (ODR), which integrates AI into law to streamline case resolution. Adopting Artificial Intelligence (AI) in Singapore is also applied in predictive analytics in case management, helping with improved resource allocation. Further, the "Intelligent Case Retrieval System" this system uses AI in the ability of legal practitioners to regain relevant precedents and legal content efficiently. Nevertheless, ethical concerns such as transparency and preconceived ideas remain despite these improvements and challenges.[16]

India

While in India, AI in Law and Justice, the opinion several members of the Law Commission have pointed out that with the advent of technology, AI is expanding its role in the legal field. Chief Justice DY Chandrachud also stated in a conference that the revolution of AI will help lawyers embrace technology with greater efficiency without dismantling the Rule of Law[17]. He also noted that the youth in the legal profession will be free from hours of tasks with the integration of AI in Law. The advantages of using AI in law would help in legal research, case analysis, case scheduling, drafting, bail application, and solving language barriers.[18]

Recent Developments & Their Application

Initially, Artificial Intelligence (AI) was only used for signatures and handwriting, but it has now served multiple purposes with time. It states that the adoption of AI should not affect the basic structure of the constitution, like the independence of the judiciary; hence, it was iterated that a case will gain validity only when a judge applies his judicial mind and not otherwise. Experts also argued that AI is already an integral part of the legal framework and welcome its advancements with open hands. This adoption has also raised an important question in the article: whether a machine substitutes a judge's opinion. – There are challenges like lack of transparency, bias, AI hallucinations, privacy concerns, monetized tiers for AI access creation, and loss of human touch in judgments.[19]

Legal Provisions

India does not have a precise, holistic legislative framework governing Artificial Intelligence (AI). Still, various prevalent laws

and policies indirectly uncover the legal aspects of AI in relation to its multiple implications across multiple fields like data protection, privacy, and intellectual property.

The Information Technology Act, 2000[20]

This act deals with legally recognizing electronic documents, digital signatures, offenses & contraventions and provides justice for cybercrimes, aiming to safeguard electronic data. It governs the core legislation for digital governance and electronic transactions. **Section 43A**[21] of this Act permits compensation in case of violation of data privacy due to negligence in handling sensitive information[22]. This section mainly deals with issues arising in Artificial Intelligence (AI) that process user data. Further, **Section 73**[23] of this Act provides for a penalty for publishing false E-signatures shall be punished with imprisonment of 2 years or a fine up to 1 lakh or both.

The Digital Personal Data Protection Act, 2023[24]

This act provides a complete framework for protecting individuals' personal data. It obligates the entities processing and collecting personal data to require consent, purpose limitation, accountability, and data localization. Further, it allows for the setup of the Data Protection Authority to administer and enforce this legislation effectively. Several issues have been addressed with the help of this Act, like profiling and automated decision-making.

It postulates explicit consent of individuals whose personal data is being processed with AI algorithms, which shall consequently impact their rights and interests.

As we see the inadequacy of legislation, if there are stringent provisions, then it imposes obligations on the entities to cope with lightning-fast advancements in AI- technology and balance the interests of people in synergy at present in India. There are very limited provisions for this integration.

Growth of AI in Law in Synergy

"The prevailing view is that Artificial Intelligence ought to be harnessed to improve efficiency in ADR and justice delivery processes, offering deeper insights and achieving a level of previously unattainable precision. Large language models (LLMs) are highly effective in analyzing, comparing, and summarizing documents. They can streamline the review process by quickly processing large volumes of text."[25]

-ACJ Manmohan, Delhi High Court

Artificial Intelligence (AI) adoption in Law is transforming the way legal professionals in the legal sector function by presenting innovative solutions that help improve efficiency and accuracy; AI amplifies intellectual operations through multifaceted algorithms and computations. Further, it stimulates human intelligence since technology has already been used to record oral arguments. There are subsequent advancements;

Artificial intelligence (AI) is used in document review and legal research,[26] and the influence of AI in the legal sphere is seen in its use in research. India has shifted from traditional methods to platforms like Manupatra, CaseMine, Supreme Court Cases Online (SCC) & Bar and Bench, significantly influencing legal applications to access and analyze data.

With the development of Law, technology, and AI, **the future of AI in Law**[27] has a scope in the legal industry to grow further, extending to even more high-class tools for legal research, document review, prediction analytics, contract management, and client interactions. This is not a mere tendency towards advancement; it exemplifies a fundamental shift in bringing efficient legal services. By embracing AI, law firms will have a greater competitive advantage, operational efficiency, and client services, fulfilling clients' needs[28].

Applying **Artificial Intelligence (AI) in contract management**[29], earlier contract drafting required greater human effort. JP Morgan Chase[30] developed an in-house AI application called COIN, known as Contract Intelligence, which was used for reviewing legal documents of contracts within seconds, without requiring a lot of time for legal practitioners annually; with the advent of this integration, it has saved time and resources and assured compliance.

Further, integrating **Artificial Intelligence (AI) in predictive analytics and Litigation results**[31] is regarded as one more area where AI is making a march; while analyzing any data, AI can predict the likely outcomes in litigation, thereby helping in effective case strategies for legal practitioners. Predictive analytics helps to examine large datasets like judicial decisions, legal filings, and obiter dictum of the judges; it is an application of AI algorithms, and its main goal is to predict the outcome to direct the strategy of identifying the trends by aggregating vast data.

Across the country, the High Couts have raised different opinions on integrating AI applications in law, such as ChatGPT, Gemini AI, and CaseMine for legal processes, along with criticisms of how they have been used. The Apex Court confirmed such integrations and validated their use.[32]

Challenges & Limitations

Artificial Intelligence (AI) with developments also imposes challenges on the road towards development, like infringement of intellectual property rights, AI-generated content is opening a great scope on intellectual property, but the case in point is when a painting is AI generated, the question of law arises who shall have the copyright – the programmers, AI entity or the individual for whom it is being created.

The core issue lies with privacy concerns like reliance on Artificial Intelligence (AI) imposes privacy concerns for training and operation when the personal data of individuals is used without explicit consent, thereby violating their rights. Further, the liability in decision-making is also a challenge in this integration. In the case of a self-driving car accident, the liability lies on the manufacturer or the software developer. Still, in the case of an AI application, it again is a vacuum. Hence, litigation through AI is still at the stage of infancy.

With the advent of AI, there is an increasing legal requirement that decisions by AI must be transparent and explainable. It is essential as they inherit and amplify the bias through the data already saved in the database. Thereby leading to AI bias and discrimination, the designing of AI systems with explanation and observance helps in legal compliance in this area with its efficient use.

Recommendations

To completely capture the benefits, the Artificial Intelligence (AI) revolution in India must adopt a cognizant policy to stimulate innovation, adaptation, and proliferation in the legal industry, and it must work hand-in-hand with information technology services.

Policymakers should position artificial intelligence (AI) as the nucleus of development. The Prime Minister's flagship policies like Digital India, The Make in India, and Skill India programs open incentives for the manufacturers.

The Intellectual property issues can be addressed by formulating stringent laws on Intellectual property protection and

AI-generated content. Privacy concerns involve strict adherence to the present legal provisions as mentioned above, implementing robust data anonymization techniques and transparency.

The suggestion for the liability limitation includes a stringent framework for AI accountability and vigilant guidelines on the deployment of AI in sensitive fields. Hence, the key recommendations to be noted are introducing ethical AI development guidelines and legislative frameworks.

Conclusion

To summarize, Artificial Intelligence (AI) in law poses a dual perspective, opportunities, and challenges, and its evolution depends on how legal education integrates it. The focus must be on industry stakeholders, policymakers, and experts. The society must be vigilant and open to adoption in legal education. The present topic establishes a nexus between law and technology, the methodologies used to navigate the challenges after rigorous analysis. The future scope will keep evolving by summing up empirical data to develop and examine the emerging trends to bring a holistic understanding of this topic.

Artificial Intelligence (AI) may possibly transform the legal landscape at its core. With more time and integration of AI within international law, the effectiveness and efficiency of legal processes are expected to improve significantly in this field based on the current situation. This integration is limited until all the complexities are addressed, which is essential for technological advancements.

Thus, it reshapes the approach of legal practitioners in various tasks and stands as a paradigm shift in the legal sphere; it can be regarded as a driving force behind the innovations in this century. These innovations and integrations increase efficiency, thereby positively disrupting the conventional legal landscape.

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ISIS: Is it an Ideology or a Religious Organisation

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Abstract

The Islamic State of Iraq and Syria (ISIS) has captivated global attention due to its brutal tactics and far-reaching impact on international security. This research investigates whether ISIS operates predominantly as an ideological movement or as a religious organisation, challenging common perceptions of its motives and objectives and the terror attacks conducted by ISIS across the world. While ISIS claims to represent a fundamentalist interpretation of Islam, this study argues that its actions reveal a complex interplay of ideology and religious rhetoric designed to further political and territorial ambitions. Through analysis of ISIS's recruitment strategies, propaganda, and operational structure, we assess how its ideology extends beyond traditional religious boundaries, appealing to diverse socio-political grievances and attracting recruits worldwide.

This paper delves into the components that shape ISIS's ideology, which includes a rigid worldview rooted in extremist interpretations and an aim to establish a "caliphate." By contrasting ISIS with traditional religious organizations, the study highlights how ISIS manipulates religious narratives to justify violence and impose control. Further, it examines how the group's ideological framework and propaganda shape its appeal, fostering loyalty among members and sowing fear among adversaries.

Ultimately, this research underscores that ISIS's agenda is more political and ideological than purely religious, positioning the group as a quasi-state actor with ambitions of geopolitical influence. Through a focused examination of ideology versus religion, this paper offers insights into the strategic priorities required to combat and contain ISIS's presence on a global scale.

Introduction

The Islamic State of Iraq and Syria, is also known as the Islamic State of Iraq and the Levant, is one of the deadliest terrorist

organizations in the entire history of the modern world. It is a Sunni jihadist extremist group that originated in the early 2000s as a spin-off from al-Qaeda but grew into a highly structured and even more evil organization of its own.With an ideology that stemmed from Salafi-jihadism, the organization is recognized for its violent extremist interpretation of Sunni Islam where the means of achieving an Islamic caliphate would be through violence.

In June 2014, the Islamic State in Iraq and Syria announced itself a caliphate, under the leadership of Abu Bakr al-Baghdadi, claiming political and religious authority over Muslims worldwide. The notion of a caliphate reaches back to the early pattern of Islamic governance, where a caliph would be both the political and spiritual leader of the Muslim world. ISIS, through this process, attempted the revival of a historical construct of legitimacy in governance providing all the necessary credibility to attract recruits from all over the world. Such proclamation of religious authority was, however, rejected by many Islamic scholars and leaders from across the globe, who unanimously denounced ISIS's actions as un-Islamic.

What is Islamic State of Iraq and Syria

ISIS is also called the Islamic State (IS) or ISIL is a Jihadist terror group that has become a major terror threat in the world in the 21st century. It was affiliated to Al-Qaeda in Iraq, which was formed in 1999 by Abu Musab al-Zarqawi. Insurgent from 2013 after separating from al-Qaeda from differences in strategic approach and in some ideological aspects.

ISIS has a very rigid version of Salafi-Jihadism, a strain of Sunni Islam through which it attempts to factualize its aggression. It announced the formation of a new state in June 2014 under its new chief Abu Bakr Al Bagdhdadiwho said he was the caliph of all Muslims across the globe. ISIS spreaded at one time and took control over a large area of Iraq and Syria implementing its strict Sharia Laws.

This organisation is known to have used hectic methods such as beheading, slavery, and destruction of historical human and cultural identities. In addition to its expansionists aims, ISIS has employed a franchisee system for the group to mount and coordinate Jihadists attacks across the globe by iconic and radical behavioural influence.

By the year 2019, they lost most of its territorial control to calling back its affiliates in Asia, Middle East and Africa exposing its spread as an Ideology. Through creating political instability, religious conflicts and use of mass technology used for communication ISIS grew into a global menace which gave great threat to global Security.

Rise of Caliphate

A new chapter in the global geopolitics is the rise of ISIS and its self proclaimed caliphate, differentiated by political, ideological and violent expansion. Understanding this phenomenon is like understanding how ISIS came into being and captured most of the territory and proclaimed caliphate in 2014 in Iraq and Syria and why these conditions should not have led to such results.

To the rise of the Caliphate, the vacuum created by the US invasion of Iraq helped in a huge scale as they overthrew Saddam Hussein's regime. After the Ba'ath party and Iraqi military were dismantled, charges of marginalization resulting from the presence of the Shia dominated government left a fragmented state with resentment among the Sunni communities. It is the sympathy with this discontent that enabled extremist ideologies to spawn in fertile soil as ISIS presented itself as a guardian of Sunni Muslim. After the 2011 Syrian Civil War, ISIS took the benefit out of the chaos in Syria to establish a strong hold.

In june 2014, ISIS became infamous internationally when it seized Mosul, Iraq's and important oil fields surrounding it which exposed their opportunity to gain wealth. Not long after that Abu Bakr Al Bagdadi declared a caliphate, a sort of political state ruled by the sanctity of islam. From Mosul great Mosque the announcement was made, a watershed moment in the modern jihadhist movement.

For the declaration of caliphate there were different reasons; historical and religious sentiments among the muslims, Especially those who yearn for the system that is unified islamic governance. Alongside with this there were strategic reasons for the declaration of caliphate as they used it as a recruitment tool for ISIS, which attracted thousands of foreign nationalities to the idea of living or the ideal Muslim run world.

In contrast to most of the extremist organisations ISIS had a well developed organisational structure and vision for governance.

Over the captured territories they enforced strict Sharia law as well as government services such as courts and schools and other welfare programs.Where this group maintained the semblance of order it was able to consolidate its power and win the loyalty, if not the compliance, of local populations.

During the peak of ISIS, they controlled a larger area than that of the United Kingdom, in Iraq and Syria. Along with the government serviss the groups style was extreme brutality which included public executions, enslavement of men and women including of the Yazidi minorities and destruction of cultural heritage sites.

By 2019, almost all the areas controlled by ISIS had been lost, but territorial loss was not the end of ISIS. Even though they lost most of the territories, they adopted into a network system where they know their ideological power while initiating coups through latent agents and friends in ten different countries in the world.

Ideology of ISIS

ISIS is an organisation and the ideology of ISIS is the extreme interpretation of islamic law in liaison with salafi jihadism. This Ultra-conservative movement issues religious tone and political consideration to produce violence authority and territorial claims. ISIS has an idea as to the kind of rule it wants to establish in its Dar-Ul-Islam as well as in the rest of the world, and this idea must be grounded in certain translations of the Quran, Hadith, history and eschatology. But what mst be kept in mind is that its ideology is anti-Islam and considered un-islamic by majority of the Muslim Population.

Foundation of Salafi Jihadism

The basic principle of ISIS is salafi-jihadism which asserts the group's conviction as a restoration of what it considers to be original Islam. Modern form of Salafism is Salafi-Jihadism which is a militant version of the Salafi-Movement which is enlisted in the attainment of religious as well as political objectives. ISIS uses this ideology to impose very harsh versions of sharia law such as flogging, stoning, gender apartheid and persecution of Non-Muslims.

Globalization of the Caliphate and its Expansion Establishment of the global Caliphate is something that ISIS Aims at. The Caliphate is not just the religious affair but the political and

territorial one that has to include all Muslims under one ruler "The Caliph". For ISIS the caliphate is operational which means that it provides the necessary political-military legitimacy to govern and mobilize international support.

Use of Apocalyptic Narratives

ISIS ideology incorporates its beliefs which include the notion of Impending Apocalypse. To the center of this ideology, there is a concept of the last battle between believers in Islam and the 'Kafir' in Dabiq. Proclaims have such a version not only to mobilise its fighters but to attract recruits who would believe that they are engaged in a holy war. What triggered the application of such a division was exploitation. ISIS uses the existing beef between Sunni and Shia Muslims to its advantage. It uses its propaganda to depict Shia Muslims as rebels and Justify extermination of the detested sect of Islam.

Justification of Violence

ISIS refers to religious scriptures as justifications for violence, including terrorism, beheading and enslavement. Its approach to the jihad concept is broader than simple defence but also includes warfare for the conquest of territory for the islamic state. The group is violent and tends to use methods as suicide bombing and mass killings and all this is justified with religious purposes of cleansing the world.

Ideological Appeal

The reasons individuals and groups become attracted to ISIS revolve around the satisfaction of their grievances as insignificant minorities. Hunger, loneliness, lack of identity all lead certain individuals to the attractive and interpersonal solutions ISIS offers. Its elaborate call to its mission through online screen recorded and produced videos, motivational media campaigns on social media and its Magazines enhances its outreach especially among the youth who feel socially excluded in societies.

Criticism

Most of the scholars, government and even organizations have denounced the ideologies of ISIS. Many mosque and Islamic scholars and prominent personalities have condemned ISIS and declared it as an Anti Islamic. Prominent religious leaders and critics argue that ISIS distorts Islamic teachings for political and

ideological purposes, while it backlash the religion in itself.

ISIS has an appropriate ideology which is a combination of religious, political scenario to justify its act and mobilize people. Nevertheless its structure is genuinely more political than spiritual in its basis. What is evident in the conduct of ISIS is that its political motivation is indicative of a terror group, and is not motivated by religion in any genuine sense of the word.

Spreading of Ideology

It may be noted that ISIS functions as a global force because it is more of an ideology than a religious institution. Although ISIS shows an extreme form of religious terrorism, the ability it has to motivate people and carry out attacks shows its ideology is not geographically limited.

Traveling around without leaving home

Another feature of ISIS activity is that it manages to plan attacks in regions remote from the centers of Iraq and Syria. It has been in the news several times, for example the 2015 Paris attacks, The 2019 mosque shootings in New Zealand and the 2017 Marawi siege in Philippines are specimens of its ideological distribution. These recent incidents show that those people or organisations that claimed allegiance to ISIS sometimes carry out acts on their own initiative and without any guidance from the Headquarters in Iraq.

Paris Attack (2015): The two successive terrorist attacks that resulted in the death of 130 people were executed by Jihadist who were born and indoctrinated in Europe. Although some of the prowlers may have had connections to ISIS's central command, others acted on its premise alone.

Christchurch Mosque Shooting (2019): Even Though the attack was not directly conducted by SIS, its process makes a perfect example of how the narratives of extremism generate the conditions for violence. The attackers rationale was extreme as it ideology which organisations such as ISIS utilise.

Marawi Siege (2017): Some extremists in the Philippines swore their loyalty to ISIS. While being separated by continents they copied ISIS's strategies and goals, which is an example of how local insurgencies modify the ISIS image.

The fact that ISIS is never required to transport anything between its central offices and these places shows that its control is

not physical, as one might expect of a criminal organisation, but is ultimately ideological.

The Propaganda

ISIS has been very successful at using propaganda to spread its message. His digital operations have been as aggressive and effective as any group of this nature particularly on social media. Messaging apps and on the dark web. The Groups magazines such as VOICE OF HIND deliver sophisticated message tailoring to various audiences.

For Western recruit: Emotions are used in messages and often the focus is put on the rejection of society, where ISIS can offer the viewers the feeling of acceptance.

For Local insurgents: Propaganda celebrates themes of fighting tyrants and paints ISIS as the head of Jihadists front. Videos containing expreme violence are created to intimidate the people who stand against and inspire respect among the supporters.

Localised Affiliates and Individuals

More evidence of ISIS ideology is seen though the emergence of regional and personal branches as well as lone wolves. Many Affiliates run as separate organisations; common regions for affiliates are, Southeast Asia, Africa as well as Europe. Such groups as Boko Haram in Nigeria, Abu Sayyaf in Philippines employ the ISIS branding and the ideologies to solidarize themselves.

ISIS has its own way of recruitment where people radicalize and fund themselves without any help from any local affiliate. Solitary offenders are motivated by propaganda and perpetrate terrorist acts and have no link to ISIS headquarters or trainers. Some can be categorised as the 2016 Orlando club shooting in the United States of America or the 2017 Manchester arena bombing in the United Kingdom. They inform that even if the physical terrorist state as caliphate no longer exists, ISIS spirit is far from gone.

More than a Religious Organisation

Even though ISIS couches its activity in religious terms, the organisation's base is not strictly limited to religious believers. The groups ideology combines political, psychological and social dimensions:

Political: Ironically through complaints against western policies and local governments, ISIS seeks to represent the defence of Muslims around the world.

Psychological: ISIS gains advantage by targeting one of the most basic human requirements that is the need to belong and with a call to a specific mission.

Social: ISIS uses such aspects of the narrative of victimology and narrative of heroism, in which violence becomes justified due to oppression. It selects religion as its weapon to ensure that its actions are justified and people come forward to join the group. However they engage in operations, recruitment and global expansion which makes it operate, not like a religion, IT operates like a political party with the main genda of occupying power.

Counterattack Measures Taken in India

India is a home to a large population, A rich country inhabited by the poor, home to a large population and geographically located in a volatile region; thus it inhabits many challenges in the fight against ISIS influence. Despite the fact that the county has not witnessed giant attacks pinpointed from ISIS, its Impact was remarked by the cases of radicalization, recruitment, and online propagation of extremism. To this menace, India has been quite responsive and has deployed intelligence, policing and community engagement.

Emergence of ISIS in India

ISIS has declared India as its natural target when it comes to geopolitical strategy and symbolism to advance sectarian tensions and narratives of exclusion. It is very clear that this group's propaganda has been central in the radicalization of individuals through the use of apps and Social Media. Kerala, Tamil Nadu, Maharashtra and west bengal are among the states where people are trying to join ISIS or suspected to be involved in ISIS conspiracies which have been reported.

Of them, Kerala has been identified as the key state where ISIS influence is the most firmer. The Malayalam channels have reported that over 50 people from Kerala had migrated to Afghanistan and joined ISIS in 2016. Moreover several radicalization cases in the state have been associated with the group's radicalisation. Studying showed that topics praising the caliphate and narratives of being mistreated appealed to some young individuals.

Crimes and Incidents Linked to ISIS in India India has witnessed several ISIS-related incidents, highlighting the need for sustained vigilance:

The Kasaragod Case (Kerala): Out of the 21 people from Kerala, Kandiyal claims that all of them went to Afghanistan in2016 to join ISIS and fight for them.

Coimbatore Plot (2019): A Tamil Nadu ISIS cell was busted in Tami Nadu, planning attacks to avenge the Sri Lanka Easter bombings.

Digital Radicalization Cases: Many people are under arrest across India for investigations into those who are plotting lone wolf attacks or recruiting for ISIS on Social Media ISIS related criminal activities in the state of Kerala has been a major area of concern and has become a subject of discussion in media and public. However it was only after the release of The Kerala Story that people got to know about such stories when certain departments and agencies pretend to be engaged in radicalizing and recruiting persons into ISIS. Even though one might point at the movie at some things which further exaggerated it has effectively contributed to increasing public awareness of radicalization particularly in the sensitive areas.

Steps Taken by India to fight ISIS

Thus analyzing India's experience with combating ISIS it is possible to highlight the presence of intelligence, police and preventive measures.

Strengthening Intelligence Agencies: The National Investigation Agency (NIA) and Intelligence Bureau (IB) have increased their efforts towards ISIS, from social media spending to tracking Radicalization process.

Counterterrorism Operations: Many actions have been taken to disarm ISIS-inspired cells. It has been, however, active in probing cases including the Kerala cell and the plots in Tamil Nadu among others.

Digital Monitoring: Since ISIS relies so much on propaganda through the Cyberspace, surveillance in India has been enhanced. There are agencies that monitor extreme items and cooperate with leaders in social networks to delete improper materials.

Community Engagement: Preventing radicalization programs are being implemented at the moment. Therefore, all mosque leaders, other community personalities, and non-governmental organizations must help teach the youths of the risks of embracing terrorism.

Conclusion

In analysing the character of ISIS in relation to the subject of religious radicalism, this work conclusively determines that ISIS is

not in any way a religious organisation. ISIS again claims to be the custodians of an Islamic Government by declaring an islamic caliphate and uses Islamic language, but its conduct is contrary to Islamic Shariah. The group uses a religious mask to cover its violent, oppressive and divionalist behavior that is inapplicable to any religion regardless of its liberal or conservative nature because it negates the entire spirit of the religion which is pacifism, benevolence and justice.

Finally ISIS still exists as an organisation network; its primary source of sustenance is ideology and the suffering and anger of the people it mostly employs to forward its attack. The society has to identify this ideological threat and then try to combat it with a range of measures starting with a counter attack program, continuing with education approaches with understanding and promoting the respect for diverse faiths.

That is why it is crucial to view ISIS as an ideological organisation and not a religious one because knowledge of ideological processes will make it possible to suppress the causes of the formation of ISIS like organisation.

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Balancing FOS (freedom of speech) and Hate Speech Regulation: A Legal and Moral Inquiry

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Abstract:

In this paper, we discuss one of the most prized democratic rights — FOS (freedom of speech). It enables the people to tell themselves and talk it out and under control his own or change his community in a righter way. But what if it's used to spread hate? The issue has stirred up tough talk about where FOS (freedom of speech) should end and what laws can do to protect people from suffering. This paper also discusses the balance between protecting free expression and preventing the damage that speech of hate can inflict on individual and social life. Using the approaches of John Stuart Mill's jurisprudential ideas of his harm principle and the theory of human dignity it argues whether laws against hate speech may be constitutionally lawful yet morally valid. It also grapples with tough questions: Are sometimes these laws a little too far maybe going against the wishes of people who should not be going away silently? Or do we require them even, to create a world where everybody feels safe and significant? Through real-world examples, the paper explores how other countries in real-world America deal (Canada, Europe) with this. Some believe anything at any price but others are more firmly opposed to hate speech in defence of vulnerable groups. They analyze what these choices say about their values, and how difficult it would be to enforce such laws in a fair and even way. Ultimately this research finds that it is possible to strike a balance (not easy, but possible) Laws should solidly promote open dialogue, but not with expressions that hurt other people. But this paper combines law and morality to demonstrate how societies can reconcile freedom and respect for dignity so that everyone can speak without the fear of being murdered.

Keywords: FOS (freedom of speech), Hate Speech, Democracy, Harm Principle, Human Dignity, Legal and Moral Balance.

Introduction

Democratic societies have one of the most fundamental rights: FOS (freedom of speech). It is the basic instrument of individual liberty through which people can think, challenge authority, and push governments. And without the platform to speak freely, innovation, and activism, would be extinguished. From no religious passion at all right through to the highest ardor, it has, of course, always happily taken its part in the battle against oppression, being the means of change and a guard against tyranny. The idea of unrestricted speech is beset by a stark challenge from hate speech [language] that is capable of inciting discrimination, hostility, or violence. As an issue, the rise of hate speech has been thrust into the spotlight, with ever more connected world and technology's ability further to propel every voice, debates on FS (free speech) have increasingly become urgent. Should harmful speech be allowed for the sake of freedom, or do societies need to impose limits so that vulnerable groups will be spared harm?

It's not just a question of how much speech, how much hate speech can we tolerate, this is a profound moral question of what is the right thing to do. At its heart lies the question of values: what kind of society are we creating? I refer to this as: how should society be oriented towards unfettered expression, or to protecting dignity, equality, and safety? In this paper, it then embarks to explore this delicate line between FOS (freedom of speech), which is not absolute. However, hate speech laws don't have to tear down the foundations of free expression if they are, instead, thoughtfully designed.

The Evolution of FOS (freedom of speech)

FOS (freedom of speech) is very much embedded in a political, philosophical, and social process. The history of FS (free speech) dates back to ancient Greece, some of the most important names of the discussion were Socrates and Plato who wondered what can be made FS (free speech) in the sense of speech (and public life). FS (free speech), however, took on broader meanings until the Enlightenment, when individual rights were touted, and authority challenged.

The great championing of free expression occurs in the work of philosopher John Stuart Mill in his seminal work On Liberty published in 1859[1]. He defended the free exchange of ideas, ugly and offensive to some, as being essential to a progressive society. Suppressing an idea is to prevent mankind from the possibility of testing the validity of the idea, he writes. Even falsehoods are good, because falsehoods are things that drive towards, and become a help of, Truth. And this had nothing to do with any crusade for perfect individual liberty, but rather any crusade to fight for the complete knowledge and truth for a collective entirety.

The Modern Challenge of Hate Speech

In the modern world hate speech has become a major concern to the notion of limitless FOS (freedom of speech). Also, hate speech involves communication to incite hate, or even assault certain people or groups, which also frequently discriminates by ethnicity, religion, gender, or sexual orientation which cannot be changed.

The following question then arises; should societies accept hate speech as FOS (freedom of speech)? Some people say that people are allowed to use offensive language because FS (free speech) should be observed at all costs. They dismiss the 'slippery slope fallacy,' whereby some societies seek to limit hate speech only to see the barriers shifted to surrounding the speech people consider they should not utter. However, critics quickly argue that hate speech threatens the very rights that have been said to be protected by FOS (freedom of speech) such as; equality, dignity, and mutual respect.

Hate speech, historically and unhistorical defined, is all forms of communication that advocate hate, violence, or Discrimination against some other person or group based on the nature of their skin colour, belief, gender, or sexual preference. Prejudice is not exceptional, however, the ease in its expression, the multiplier effect of technology, and the large number of people who can be reached are unique in the social media age. It suffices to say that new-generation online communities, where people share SCN content, are perfect environments for harbouring hate speech.

For example, online harassment campaigns involving the use of hate speech aimed at women, people of color, or members of the queer community are good examples of the way hate speech can produce both personal and social costs. The impact of crime can

either be physical or psychological; it is common to find victims developing anxiety and depression and in severe conditions withdraw from society. Hate speech goes far beyond insulting; it harasses and stymies. In addition, one can note that it disorients people and undermines social contact, or degenerates the population into accepting extremism. [2]The March 15, 2019, shootings at two mosques in Christchurch, New Zealand show that hate can proceed from social media to real violence, once the hate is not regulated.

Philosophical Foundations: Balancing Liberty and Harm

The regulation of hate speech is not a legal issue but is inherently a moral problem. It requires societies to grapple with competing principles: the same right of FS (free speech) as well as the question of the use of freedom to cause harm to others.

The following analysis begins with Mill's harm principle.[3] Regarding the subject at hand. For all his advocacy for free expression, Mill accepted that liberty had to bow out when it violated the rights or even welfare of society. Hate speech is inherently and by design, toxic and chains a retributory effect. Regardless of what, psychological suffering, rejection by society, or call for pogroms, hate speech always results in real victims. From this particular angle, banning hate speech is consistent with Mill's principle; it is a way to stop violative influences whilst preserving the general worth of FS (free speech).

As is the principle of human dignity which has always been in the backbone of the international human rights systems. Dignity explains that everyone is established with intrinsic value and should not be abused.

Nevertheless, it is not very easy to achieve these principles simultaneously. The main concerns that people who are against the hate speech laws usually have include; the issue of getting it wrong somewhere and experiencing all the negative consequences. When a state becomes the arbiter of FS (free speech), who decides what hate speech means? Could such laws be utilized to give blanket legal authority to suppress opposition or pend grudge? These questions bring out issues of clarity, fairness, and proportionality regarding the formulation and implementation of hate speech laws.

Comparative Approaches to Hate Speech

The United States boasts of FS (free speech) as its prime annexation of the First Amendment.[4] Which allows people to

speak their minds, no matter how derogatory it might sound. This policy recognizes the value of FS (free speech) whilst also offering latent threats to minorities. For instance, pro-violence can be promoted by individuals, and such a personality will not be prosecuted, even when there is no immediate threat implied for instance, from (Brandenburg v. Ohio 1969[5]). It champions FS (free speech) but rejects hatred and harassment almost exclusively against certain minorities.

On the other hand, Canada can be used to illustrate a different model. In the same way that FS (free speech) is given in any country except Canada, FS (free speech) is also protected in Canada at least, if not at all. The laws of the country allow limits to be placed on speech that poses a threat to the safety of individuals or the majority in society or causes severe loss. For instance, Section 319 of the Criminal Code[6] Has measures against anyone who archival any kind of hate speech against any group of citizens as recognition of the fact that citizens have to be protected from threats and acts of violence.

In European countries there is a history of extremism and their desire to ensure that such an event does not repeat itself has also led to more stringent laws on hate speech. Speaking of the examples of hate speech, it is necessary to refer to the ideologies, which are prohibited in many European states, namely, Holocaust denial. This proves how these countries fight against extremism as they protect human dignity.

A Path Forward

The subject of discussion of this paper shall be the difficult phenomenon of hate speech and its relation to the FOS (freedom of speech) in society. It will be used to advocate for the right to FS (free speech) but with risks that arise from hate speech. This balanced approach will be founded on the following pillars: this still means being clearly defined in terms of aims and goals; in terms of formal means of proceeding; and in terms of having a focus on expanded education and communication.

Thus, the idea of hate speech the middle ground will have to be defined. This mainly means that the criteria of what constitutes hate speech is rather given by the perceptions of the person judging it. That's why the differences between FS (free speech) and hate speech laws are mostly ambiguous, while most countries either excessively control the former or insufficiently regulate the latter.

That is why the definition of a term for hate speech has to be grounded in analyzing the potential of harm. Thus, hate speech leads to social exclusion, violence, and genocide in the simplest of terms. Thus, definitions that are protective of vulnerable groups can be elicited given the knowledge of these possible phenomenal consequences. In any case, it may be best to ground such an approach on testimonies of hate speech survivors, evidence, and other studies.

Education should teach people to think with rationality about what is happening around them and about differences because FOS (freedom of speech) has meaningful aspects which are: education and dialogue in case of the social first value being well defined and embraced. One can avoid the spread of hate speech by fostering interpersonal understanding and total acceptance of unique differences.

FOS (freedom of speech): The Bedrock of Democracy

FOS (freedom of speech) is not only a legal right but a fundamental premise of most countries of the world. That said, you were right pointing out that it gives people a voice that matters, gives people a vehicle to change it, to push for change, to push power brokers. In the past, many social causes have been supported by people's right to FOS (freedom of speech) to make changes and challenge authority.

John Mill had a lot to say about FOS (freedom of speech), especially in his book "On Liberty"[7] And this has shaped the actual meaning today. He presumed that even if the opinions are unwelcome or disgusting, they should keep on being protected; the free open market of ideas is the best way to discover the truth and hence tidal societal advancement. Mill went on to say that limiting speech would stand against the ability of a society to grow and improve.

Both Mill's works contain an admission of the difference between FOS (freedom of speech) to other virtues For Mill, there are boundaries to FOS (freedom of speech) and he advanced that with the harm principle. The principle is that FOS (freedom of speech) could be limited only to protect another individual. Legislation for FOS (freedom of speech) has actually been enacted as a result of this idea – this is as a result of the fact that certain restrictions can be put

on the FOS (freedom of speech) in order to prevent incitement of actions that may lead to loss of people's lives or health.

Philosophical Foundations: Harm and Dignity

The core issues in the discussion about hate speech law revolve around two main concepts: harm and dignity. Then there are the factors when it comes to the limits of FS (free speech), and the regulation that might be needed.

The principle is easily applied to hate speech when we all can easily state that language that incites violence, exclusion or causes strife is a direct or indirect harm to society. Yet the job of figuring out harm, and especially speech harm, may not be easy at all. In the case of relative generalities, it is easier to ponder physical injury and psychological pain or the harm done to society. Sometimes, it is unclear when FOS (freedom of speech) borders on harassment and Discrimination with potentially problematic effects.

The other important concept considered here is defined as dignity, the worth of a human being. This is part of the core principle for the IHRL.[8] And has been incorporated in the constitution and laws of some nations. The last fact continues what the previous one tells us about hate speech can be considered a human dignity violation because it generally and through generalizing specified groups of people reduce their respect and recognition.

However, there exists a conflict of interest between the subject's right to human dignity and the freedom to voice substandard verdicts. Opponents, however, believe that radical application of hate speech laws may lead to restriction or quashing of otherwise lawful FS (free speech) which could be important In a discourse. This gives rise to concerns as to how regard for difference could be achieved without impinging on such rights.

The example of hate speech laws was then described, which are so important because they protect an individual from human dignity, and in the same way, protect FOS (freedom of speech). For society to stay fairly democratic and welcoming and understanding of one another, a need to avoid extremes.

Comparative Perspectives: U.S., Canada, and Europe

• France: Blasphemy and Hate Speech

France remained a special country concerning the FOS (freedom of speech). Though its policy promotes FOS (freedom of speech), it does not allow individuals to exercise FOS (freedom of

speech) in a manner that is provocative on issues that cause hate or utter any religious insult, blasphemy included. The current law also prohibits the negation of the Holocaust and the admiration of terrorism. France remains an insistent candidate in the opinion that it is possible to prevent some forms of words that are invasive and yield too much harm that they have to be banned under FOS (freedom of speech) in other countries.

• Australia: Controlled FS (free speech)

But there is FS (free speech) in Australia; however, FS (free speech) is based on limitations. Section 18C of the Racial Discrimination Act[9] Provides for the protection of people on grounds of race, color, or national origin The provision restricts speech if it is likely to offend, humiliate or insult someone on grounds of race, color, or national origin. However, because of much debate, in 2017, a part repeal of this section was done which eliminated the aspect of "insult".

Australia appreciates the importance of recognizing FOS (freedom of speech) especially for political purposes, but at the same time, primary importance must be given to the principles of rights of individuals against abuse, or harassment.

• New Zealand: Balance and Protection

Thus, New Zealand's model of FS (free speech) is quite similar to the Canadian one, protecting the members of society most affected by hate speeches. [10]Section sixty-one of the Human Rights Act also bans speech that incites hate for any group. This includes the government's want for a society where they feel safe, as speech should not pose such a danger.

For that reason, whilst the U.S. enjoys FOS (freedom of speech) as such, and allows even speech that may offend vulnerable groups, countries like Canada, the U.K., France, Australia, and New Zealand place restrictions on speech to prevent the offending or otherwise harmful speech to vulnerable groups, or the disruption of peace. Their laws too, as proof, are built with provisions of respect for human rights, equality, and sociological order promotion. This global array also proves that the protection of FS (free speech) does not have a single standard and exercises have to balance between the value of expression and harm that might come from it about certain values and experiences of a particular jurisdiction.

Hate speech, it also reads, is banned because it goes against the aforementioned freedom of expression under the grounds of protecting democracy and public order, always. This is because hate speech, otherwise defined as speech that is likely to incite hostility against, prejudice, or violence against an individual or a group of people on the basis of a given attribute, is capable of being a huge menace to a democratic nation.

In this connection, ECHR[11] Tolerates restrictions of hate speech where such restrictions are appropriate and necessary for the maintenance of these key democratic values. Yet such restrictions will be applied differently from place to place — and even civil activists have reason to fear for their FOS (freedom of speech).

Moral Dilemmas in Hate Speech Regulation

This is true, hate speech laws are a fine line to tread for they need to keep both hate speech and FOS (freedom of speech) in check. Existing laws against which it isn't unthinkable to brand them as 'slippery slopes' in which there is an open risk for misuse, as will be seen in case-by-case situations, such as when hate speech is employed to suppress the opposition.

However, for the middle ground to be reached there is a need to explain what hate speech involves or to implement the measures towards it. Besides, there is a need to promote the generation of discussion of the different issues that are facing the current society through various organizations and to help different groups of people accept and gain knowledge of new ideas. This will also make it safe to give out free opinions without compromising or having to bear the consequences as well as gaining an ability to comprehend the impacts of what we say to other people.

Conclusion

Liberty of speech is one of the freedoms of society and is important in democracy because freedom allows someone to exchange thoughts, to experiment, to progress social development. The First Amendment to the United States being one of the longest and most perfect philosophies for such a type is the guarantee of FS (free speech) whether it be basically what it offends someone and a group of people or not.

However, such an approach can be seen to be negative as FS (free speech) might be used in cases such as; hate speech. The negative impacts of hate speech are that – encourages violence, and

discrimination, and hence hate speech is highly risky to specific vulnerable groups. The famous Utilitarian theory of Mill's harm principle is the doctrine that a man is allowed to do as he likes with his person as long as he does not knowingly and willingly harm his neighbors. Applying this rationale to hate speech it is rather surprising that there is the need to some extent to regulate speech in an endeavour to protect a certain category of people or groups from being harmed. This has been an unworthy year with protection from hate speech because each country has chosen its way. This is how the United States, with its much-vaunted FOS (freedom of speech), has been left playing catch-up while allowing far more speech to be deemed protected. However, countries like Canada and Germany have instituted legislations that target hate speech per se because the speech might trigger a lot of damage since the countries have been genocidal in the past. All in all, one becomes incapacitated of teaching, or giving ethical/moral or legal direction to society in this particular area of focus.

Freedom and dignity help keep people safe from abuse and exclusion and everyone has a voice in this way, through promoting freedom and dignity for all. This is a very careful balance that is arranged between the legal innovation of progressive education and social inclusion based on the principles of liberty, respect, and empathy. That is, FOS (freedom of speech) and that which protects us from hate speech must complement each other for society's betterment.

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Artificial Intelligence and Intellecual Property Laws: Striking A Balance Between Innovation and Protection

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Abstract

"I visualise a time when we will be to robots what dogs are to humans, and I'm rooting for the machines." —Claude Shannon. This paper explores the complex and ever-changing relationship of Artificial Intelligence and Intellectual Property Laws, examining the opportunities, challenges, implications, and potential solutions. AI has been designed to be capable of thinking, acting, and learning like a human. However, with such abilities comes uncertainty regarding the legal environment in which AI falls. First, the researcher is discussing the authorship and ownership of AI-generated content as well as the current laws of IP and their applicability to Artificial intelligence systems. The researcher is then proceeding to examine the approaches followed by various countries towards AI and IP laws and the extent of their applicability. Further, the paper emphasizes developing the innovation of AI systems without harming human-created works. Thus, it proposes a balanced approach that keeps both parties in mind. Moreover, the researcher addresses the very basic question of whether the content generated by AI should be given the same level of protection as human created-works, considering both ethical and economic perspectives. This paper also goes into the possible economic consequences of the expansion of intellectual property protection for AI-created works, such as its impact on competition in markets, innovation incentives, and technological progress. It further investigates technical challenges in determining what is a human-made, AI-created, or pure AI-created work, along with possible classification and protection frameworks. Conclusions of the paper include policy recommendations for adapting existing IP frameworks for AI

innovations while maintaining basic principles of intellectual property law.

Keywords: Artificial Intelligence (AI), Intellectual Property Law, AI- generated content, Authorship

INTRODUCTION

The rapidly evolving landscape of Artificial Intelligence has revolutionized the way we use technology in today's day and age. AI has become a powerful tool that can create content, artwork, Music etc, thus creating new challenges for our current IP laws. AI is widely accessed by multiple users daily to generate content, and help them with daily tasks. Artificial Intelligence (AI) stand out as one of the most revolutionary technologies of the twenty-first century. Starting from changing boundaries across industries and expanding concepts of creativity and innovation, AI has surely gone beyond the advancements which anyone could have thought of. Such generative AI systems as OpenAI's GPT and DALL-E are already considerably more developed and can produce new work that previously was thought to exist solely in the human domain. These developments bring into question the basic premises of the laws relating to Intellectual Property (IP): Both its foundations have grounded themselves on the concept of human authorship and inventorship.

IP laws encourage creativity and innovation by granting exclusive rights to creators and inventors respecting the output of their mental labour. However, the content generated by AI gives rises to several questions:

1. Are AI-generated works eligible under present IP laws for protection?
2. Who is really to be considered an author or owner of an AI-generated work?
3. How should IP laws be adjusted to accommodate AI innovations?

This paper seeks to answer such questions by tackling the issue of the intersection of AI and IP laws, find key challenges, and offer recommendations for the future framework. It shows the balance between promotion of innovation and protection, ensuring that IP laws can remain both strong and flexible in the face of rapid technological change.

Ai-Generated Content and New Challenges for Traditional Ip Laws

Authorship and Ownership

Authorship and ownership are the basic components of IP laws. However, AI-generated works pose a new challenge to these concepts. Since current legal frameworks, such as the Copyright Act of 1957 in India[1], restrict authorship to natural persons, non-human creators of the work are excluded. This inherently precludes the possibility of a legal vacuum pertaining to AI-generated creations; there is never a straight link to any human author.

For example, the Indian case of Raghav and the South African case of DABUS symbolize global efforts at trying to harmonise AI contributions within creative spheres with the prevailing legal order.
Raghav Case (India): Here, the law does not recognize nonhuman authorship. The work was denied copyright protection for being an AI-generated work. Later, when the human collaborator was considered the author, copyright protection was granted. The Indian approach to intellectual property legislation is strictly human-centric.
DABUS Case: In South Africa, for the first time ever, an AI was given the status of a patent because it was the inventor. The norm was broken and the question has been revived whether a non-human entity can be considered as inventor and/or author--the latter issue remains how to establish the authorship on works by AI.
Should authorship be assigned to the:

- Developer of the AI system, as the one having comprised the tool?
- User of the AI, as the one supplying inputs or instructions?
- AI system itself, as an independent creator?

Confusion across jurisdictions with respect to these differences only mushroomed uncertainties for creators and innovators who attempt to navigate the murky waters of such legal space.

Originality and Creativity

The concept of originality is fundamental in copyright law and represents the most common criterion used by courts in determining the work's eligibility for protection. This concept is usually interpreted differently in various jurisdictions under the human creativity perspective; they think that the work should reflect human intellectual effort or skill to be qualified for protection. When the work involves only computer operations through artificial

intelligence, there arises questions about the applicability of the principle and therefore great legal uncertainties.

United States Approach

In the United States, for instance, it specifically calls out that it should contain "a modicum of creativity" emanating from a human author. Courts always ruled out works that are conducted without involvement from humans in copyright claims. An example is a "Monkey Selfie" photograph, for which U.S. Copyright Office does not merit protection because this work has been taken by an animal and the authorship is, therefore not human. Under the law of copyright for the United States, pure AI-created works have related problems also.

Challenges with Mixed Authorship

AIassisted creations, wherein human involvement and artificial intell igenceinteract, complicate the distinctions surrounding originality. E stablishing the minimum level ofhuman contribution necessary to ful fil the"humancreativity" standard remains a debated topic.For instan ce:If an individual offers limited input,suchas choosing parameters, while the AI produces most of the content, can this be regarded as humancreativity?Should judicial systems formulate new assessments to gauge the degree of human involvement in AI-assisted creations?

Ethical and Economic Considerations

Challenges

The heavy dependency of AI systems, especially the generative models, on large data sets to learn and create the outputs raises a few ethical concerns. In most cases, these data sets contain copyrighted materials, personal information, and culturally sensitive material.[2] This raises questions about the ethical boundaries of data usage and the responsibilities of AI developers.

Transparency is a major issue. The "black box" nature common in most AI systems means that how results are produced is often unclear, making it hard to understand how a particular outcome was reached. Bias in AI algorithms can perpetuate stereotypes or lead to discriminatory outputs, making their use even more problematic in creative and innovative areas.[3]

Ethical frameworks must consider the cultural and moral implications of works created by artificial intelligence. For example, AI systems may unknowingly create outputs that are culturally or

morally offensive, particularly when the training data lacks diversity or context. The concept of moral rights for creators is complicated when AI-generated content appropriates elements of human creativity without giving due credit.[4] These circumstances need to be covered in the legal and ethical framework so that the rights of the creators are protected and cultural heritage is preserved.[5]

Another ethical concern is the use of AI-generated content, which may be exploited. Take, for instance, deepfakes-a product of AI that illustrated its potential to be weaponized in the production of content that is misleading or hurtful.[6] This violates personality rights, but is much more seriously a threat to the public's confidence in digital content. Much regulation and mechanisms to oversee properly must be accomplished to avert these potential threats.

Finally, there's continuous debate as to where the line should be drawn on acknowledging and labelling work done by AI. Some argue that AI-generated content may need to be categorized and labelled, maybe with the help of watermarking or metadata, to clear confusion and provide traceability. If done properly, transparency could be improved, allowing the general public to better accept innovations from AI.

Economic Implications

As technology advances, artificial intelligence transforms economies by making work efficient and automating boring tasks or encouraging new ideas. While it has specific economic issues when included in the system of intellectual property, for this reason, it hampers innovation as creators are protected too much. Overly strict intellectual property regimes have the potential to inhibit innovation by limiting access to necessary training data or by stifling the advancement of novel artificial intelligence systems. In turn, overly protective frameworks can discourage investment in AI research and development, as creators and developers may not be incentivized enough to innovate.[7] Artificial Intelligence has a strong influence on the creative industries. For example, platforms like ChatGPT or DALL-E change the way content is created and therefore, the need for human creators in particular areas will eventually begin to decline. This saves money but moves toward job replacement and devaluation of human output. Economic value of work generated by humans may decline if AI-generated outputs dominate the markets unless there is differentiation or proper form of credit. This creates

significant economic concern in which a small number of large corporations end up monopolizing AI technologies. Some of the most significant companies holding considerable financial muscle and abundant data will certainly have a stranglehold on the AI market, thus rendering it difficult for other companies or individuals looking to challenge these giant corporations. In this case, the marketplace power may become concentrated and innovation diversification may diminish.

Comparative Analysis

U.S.A & European Union

The United States and they European Union have continually supported the concept of human authorship and inventorship in its framework of intellectual property laws. This approach has its basis in what may be described as the core or fundamental function of IPRs, which is to enhance human creativity.

However, the rule on 'authorship of works' has been underlined in the last rulings in the United States. For example, to the works such as Zarya of the Dawn, the U.S. Copyright Office did not grant the protection status of AI-created illustrations since it was not created through the artistic genius of a human.[8] Similarly, in Thaler v. Commissioner of Patents, courts dismissed the idea that an Artificial Intelligence system could be given an inventor under the Patent Act as inventors are limited to natural persons only. This case has enjoyed frequent reference particularly in the extent to address the issue on inventorship in relation to the U.S as the AI advancement increases.[9]

Similarly, the European Union has taken an identical view. The EU Copyright Directive does not mention AI-generated content at all, though many of the member states only recognize those works that are created by human intervention. The EPO also refused to grant patents where DABUS had been listed as the inventor under Article 81 EPC which maintains that the European patent application must be made by the inventor.[10]

But the EU has been quite active in terms of thinking through the general AI Read More: The country's Artificial Intelligence Act that is mainly designed to address the problem of the ethical and safety of releasing AI systems influences intellectual property indirectly having placed standards for the openness of AI outputs. The two jurisdictions have acknowledged AI as a threat to the

conventional IP systems, but they are guarded against granting authorship or inventorship to other than natural human beings.

India

India's intellectual property laws confront similar challenges but do not possess the proactive regulatory initiatives that can be found in the U.S. or EU. The 1957 Copyright Act[11], which is the law governing intellectual property rights in India, attributes authorship of computer-generated works to the person who "caused the work to be created."[12] This provision fulfils AI-assisted works but makes no room for independent creations by AI systems. An AI system generating a song or artwork on its own provides no clear avenue for protection under existing laws.

India, like the rest of the world, requires human inventorship in patent law. The Patents Act of 1970[13] does not specifically prohibit inventions produced by AI but does assume that inventors are natural persons. This assumption was tested in a recent application involving an AI-generated invention where the Indian Patent Office refused to recognize the AI as an inventor.[14] Policy creators have admitted a necessity for reform but have yet to introduce sweeping legislation dealing with AI and intellectual property.

WIPO – The World Intellectual Property Organisation

WIPO has become an important focal point in resolving some of the issues of AI and IP on the international level. It has led a series of key stakeholders' dialogues on the challenges of AI for IP systems worldwide, via its WIPO Conversations on Intellectual Property and AI.

The second issue of WIPO's discussions has therefore been on the ability of AI to develop creative and inventiveness works. Subsequently, the organization has recognised that there are many differences between jurisdictions regarding AI-generated content and has stressed the importance of achieving consistency to close any protection loopholes.[15] For instance, both South Africa and Australia have legalized the consideration of AI as an inventor, however, most other jurisdictions have dismissed the idea, and therefore the legal status of this approach remains ambiguous to innovators functioning internationally.

Further, WIPO has also recognized other issues of ethical and legal nature that are related with the usage of training datasets, the

explainability of the AI decisions, and responsibility of outputs produced by means of AI. These issues raise questions on how AI can be fit under the existing IP laws without erecting barriers to entry that will hinder further innovation, or infringing on the rights of the IP creators.[16]

Nevertheless, WIPO's interventions have remained consultative, with insignificant advances in formulating and implementing the policy outcomes. This is an overall complex problem of the formation of an international consensus regarding AI and IP considering the legal, economic, and cultural differences of Member States. In the future, WIPO might be even more active, offering model laws or guidelines as far as members can apply them according to their contexts.

Recommendations and Solutions

Legal Reforms

Dual Authorship Models:

The current IP models mostly neglect AI-generated works because they primarily center on human authorship. An alternative is to combine human and AI authorship, which would grant AI developers co-authorship when significant human users have contributed to the creation of the work. This model also enables AI tools to be utilized when creating; however, it ensures that the main and most important part will always be a human.[17] For instance, if the DABUS AI model created a novel, the writers would be given co-authorship status along with the AI developers. Such models would however require guidelines on the amount of human input required for the recognition of co authorship.

Patent Revisions

Patents should expand the scope whereby AI also qualifies as an inventor. If AI systems can invent autonomously, then one way to put AI systems into the box is to consider them independent inventors where human creativity isn't involved in the end product. The DABUS case is an excellent example that revealed a gap in the law where a closed-minded approach to inventorship is appropriate.[18] Other amendments could be made to the patent law and include where AI patents would be owned by its operator or owner which will ensure inventions are paid for thus, making sure AI innovation is appealing to any investor.

Customized Protections for AI-Generated Works

Besides hybrid authorship and patent rights changes, jurisdictions may provide further legal protection for AI-generated works. Sui generis rights for AI outputs may also be crucial to protect certain outputs for a limited time so that they are not left totally unprotected while avoiding monopolies.

ETHICAL GUIDELINES

Requirements for Transparency

Transparency plays a vital role in building trust in AI systems. Disclosing the training data used in AI models can help alleviate concerns regarding copyright infringement and biases. Developers should be transparent about the sources of data used in training, enabling stakeholders to evaluate the ethical and legal implications of AI-generated content.[19] This practice empowers creators to recognize and address unauthorized use of their content within AI training datasets.

Fair-Use Frameworks

A clear framework of fair use is therefore needed in this regard in order to chart the use of copyrighted material for training datasets. The use of such a framework needs to delineate acceptable limits of copyright uses by AI developers as against the creators of the content. Guidelines may be given for non-commercial research and development with possible exceptions, but any commercial applications require proper licensing. Such guidelines will facilitate the responsible use of copyrighted material, but also spur innovation in AI.

Accountability in Ethical AI Planning

Furthermore, accountability and ethical practices are paramount in AI development. Developers must uphold ethical standards, especially in areas such as bias mitigation, cultural sensitivity, and user safety. Implementing codes of conduct for AI development and deployment can promote ethical behaviour and minimize potential harm.

Policy Recommendations

When tackling the intricate issues presented by AI-generated content, policymakers face the challenge of establishing consistent global standards for intellectual property (IP) laws. This harmonization across jurisdictions is essential to provide clarity and stability for innovators.[20] Leading organizations like the World

Intellectual Property Organization (WIPO) can play a vital role in setting fundamental safeguards for AI-generated material, defining criteria for authorship and inventorship, and addressing ethical considerations like bias and transparency. Collaboration among stakeholders is paramount, involving policymakers, content creators, AI experts, and legal professionals in crafting flexible regulations that uphold both innovation and creators' rights.[21] For example, there should be pay for uses rights for creators, content owners whose content constitutes AI training data and set limits to restraint of trade must not prejudice the proper functioning of rules on AI. International policy makers should encourage the offering of grants and tax credits as well as preferred avenues to public funds for ethical AI initiatives. Acknowledging the diverse impacts of AI across various sectors, tailored policies are imperative; the entertainment sector may require stringent measures to counter the misuse of deepfakes, whereas healthcare might prioritize data security and privacy in AI applications.[22] The IP frameworks must develop dynamically and, from time to time, be evaluated and assessed in the context of new technologies. It will lead to an environment that promotes creativity, safeguards the interests of creators, and encourages the responsible use of AI technologies.

Conclusion

Artificial intelligence (AI) is redefining technology and innovation, exposing huge gaps in traditional intellectual property (IP) law around copyright, ownership, and ethics. Current initiatives fail to tackle the challenges posed by the emergence of AI-driven services and AI-driven innovation. Hybrid authorship models may help bridge such gaps, while revised patent standards will be able to cover products that are AI-generated so that innovations are protected.

International agreement is required to harmonize intellectual property laws and provide uniform protection for AI products. Organisations like WIPO must lead the process in formulating effective, transparent, and flexible systems combating discrimination, data privacy, and liability. Engagements among stakeholders, the developers, and the policymakers/policymaker are key to ensure effectiveness and upkeep by the creators of the said processes.

Ultimately, by combining ethical principles, industry principles, and strong laws, a sustainable IP system can promote innovation, protect the rights of creators, and support the equitable development of AI technology.

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Gender Equality In Religious Freedom With Respect To Sabarimalai Verdict

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Abstract

This paper focuses on the relationship between religious rights and gender equality, with respect to the religious rights of women and emphasis on the various problems faced by women in the execution of their religious rights. The Indian society consists of different people and therefore consists of different practices and beliefs. Society which has for many years been dominated by men has turned around to influence the rights of women to couldn't exercise their rights. Thereafter the social status of women and social change in Indian society, although the situation with the Indian women changed and improve, did not change the religious status of women in the society of India.

This led to tension between religious rights of women and women's rights. In ensuring and safeguarding of the religious rights of the women in India, Judiciary & international conventions has come out strongly. This can be instances through various judgements. In the Sabarimala case the Supreme court held that the denial of women to access the temple was unconstitutional. The judgement examined the importance of commitment towards gender justice and established constitutional morality over traditional practices. This decision received opposition of religious and culture organisation, which caused debates concerning judicial activism in question of faith and problems of implementing such reforms. International convention explained the importance of religious rights and the freedom to provide those religious rights to women and prevent discrimination on the basis of their gender. Gender equality in the society is also protected by the constitution

Keywords- Gender equality, religious rights, international conventions, fundamental rights.

Introduction

Gender equality and religious freedom are two pillars of the democratic society which interconnect the principles of HR[1] which are personal dignity and freedom. These are not compatible in a multi religious society such as India where religious aspects predetermine many aspects of individuals and group existence. The Sabarimala judgement in 2018 gives a clear picture of such a balance depriving important equality questions in the name of religious freedom when it infringes basic justice. Lord Ayyappa is revered culturally and religiously and millions of pilgrims visit Sabarimala every year. This tradition of prohibiting the entry of women is attributed to the belief that the deity is celibate which raised a lot of controversy about nature of religion in restricting the freedom and liberty of women The judgement of the supreme court[2] in declaring the ban of women in the Sabarimala temple to be unconstitutional brought a revolution in the thinking of the society. The court, declaring the practice of ban of women of child bearing age from entering the temple has endorsed the constitutional principle of equality, liberty, and secularism. Judiciary has played an important role in protecting and uplifting the social and religious rights of women in the society. This is evidenced by different judgments like granting entry of women in temple, declaring triple talaq as unconstitutional. The supporters, however, argued that restriction that is practiced in the religion should be protected under article 25 of the constitution. The supreme court paved the way to reconcile individual rights and collective culture for the necessary development of equal society.

Religious Freedom and Prevention of Discrimination

UN development programme states that “culture never is a frozen set of values and practices. It is constantly reproduced, as individuals and groups raise, reconsider and re-establish value systems and techniques corresponding to emerging contexts and shares of ideas”.[3] it is necessary for cultural practices to be beneficial to the entire group following the particular culture and not to a few dominant individuals[4].Pre-colonial India followed the practice of identifying religious communities based on the practices and traditions of the religious communities. It is necessary to apply laws of religious communities in personal matters was regarded as the "saving" of religious laws, based on the language used.[4] This

practice is prejudicial to the religious rights of women in the society. This can be attributed to the condition that over a period of time and with charged diktats of patriarchy coming into play the society witnessed a throttling of freedom for women not only in religious realm but also in matters of culture, social and politically motivated rights connected with marriage, succession, property and so on. In post-colonial India the religious rights are listed in the constitution. Article 26 provides the right to every groups of religious authority "to manage its own affairs in the matter of religion[5]" and article 27 prevents citizens from being liable to pay expenses to state for the promotion of any religious practice or religious denomination.[6]

Demand of gender equality is one of the principles evolved post- independence in India. Sexism impacted general rights of citizens in the society particularly those of women. As provided for under the constitution, the government had endeavoured to do away with discrimination of the female gender in the society. These discriminations impacted of the civil, political, social, and economic aspects of the women in the society. This extended to various sources such as property rights, religious rights etc. The constitution of India, through its fundamental rights shall declare any religious practice or religious personal law followed before the enactment of the constitution to be void to the extent that it contravenes provisions of the rights enshrined under the constitution. The fundamental rights(FR) mentioned constitution, namely art 14 of the constitution, which provides for prevention of discrimination and equal application of law for everyone in the land[7], article 13 provides that "laws in force, in so far, not at par or not satisfying the provision of this part, shall, to the extent of such inconsistency, be void.[8] Article 15 provides that "the state shall not discriminate anyone on the basis of religion or their origin, sex, or the region of birth."[9] Nevertheless, the definition of the FR[10] gives rise to numerous questions concerning the role of the constitutional status on the religious laws established for the further evolution of the judicial system..

International conventions

International organisation addresses discrimination based on the sex of the individual and other aspects of gender discrimination including discrimination that is faced in education, marriage, employment and religious rights. Various convention focuses on this discrimination. These conventions address the issue of gender

discrimination and further, provides redressal mechanisms to address of discrimination faced by woman. These international instruments includes UDHR(Universal Declaration of Human Rights), article 18 of UDHR states that, "Every individual is vested with the freedom of thought, conscience and religion; this comprises of the freedom to consider his religion or belief, and freedom, either alone or in community with others and in public or private, to implement his religion or belief in teaching, practice, worship and observance."[11], Article 9 of the ECHR(European convention on human rights) states that, everyone has the freedom of thought, conscience, and religion, which includes freedom to change his religion or belief and freedom, either alone or in a community with others and in public or private, to manifest his religion or belief, in worship, teaching practice and observance"[12], Art 2 of DEAFIDRB(Declaration on the Elimination of All Forms Intolerance and of Discrimination Based on Religion or Belief) states that, " No person shall be subject to discrimination by any state, institution, group of persons, or person based on their religion or belief"[13].

Restriction would help protect public health, peace, morality of other members of Society.[14] The scope of international law provides the guarantee that domestic laws of the country are executed fairly and provides certain checks to ensure that the right of religious practices are in consonance with law & constitution of the state and not arbitrary to the domestic law of the state that could stem discrimination which could negatively affect the freedom of relevant parties.

However, the implementation of the convention is present with certain limitations. The effectiveness in the execution of the various convention protecting religious rights is dependent on the domestic laws and customs of each country. Indian society comprises of many numbers of communities of different religion and that can be said as a subcategories which are founded based on practices and values adopted by such communities. Therefore, it becomes difficult to implement such international convention to such as diverse society.

Judicial Activism

The judiciary has helped in intervention between the religious rights and legal rights that is available for the Indian citizens. Further, the legislative enactments prevented the entry of women

inside the temple, which by custom does not allow the entry of women inside the temple are not allowed the worship in such temples[15]The state, representing the temple stated that, article 26 states that, "Subject to public order, morality and health, every religious denomination in the society is present with the right to establish and maintain institutions for religious and charitable purpose, and to manage its own affairs in matter of religion"

There is no restriction to women engaging in any activity required for the performance of their duties in this regard; the exclusion of women is not scripturally based in any way. The argument of the temple claiming constitutional protection under article 26 was declared invalid. The essentials of religious denomination were laid down by Justice Nariman in his judgement, it includes, recognition of common faith in the religious community, common organisation of the worshippers to constitute the temple as a religious denomination. The claimed conditions were not met by the temple and the worshippers; the former is not recognized as a religious denomination to meet the bar set by article 26 of the constitution. When determining the matter of recognising a religious practice as obligatory, the court pointed out that if the absence of the practice or the effects of the practice altered the nature of a religion, then the practice is obligatory. If the practice should create such an impact, then it can be considered as an essential practice. In this case, there is no scriptures in religion restricting any person from going to the temple especially women are prohibited. The court interpreted article 265 of the constitution in its definition of "all persons" stated that everyone is vested with right to freely profess, practice, propagate religion that is available to all individual and provisions of article 25 imposes restriction on these rights.

Conclusion

Gender based discrimination of women for the execution of religious rights have been in practice since historical period. India is a multiculturalist country which consist of diverse communities which practices various customs based on their unique ideology. These communities therefore cultivated various social practices and this diversity in the society would determine their social and political stance in the events in the society. The multiculturalism that is present in India affect women's liberty in India in the execution of their religious freedom. Such communities being traditional to their

maxims and due to the discriminatory rules set in the society restricted the religious freedom of females. After India's independence, policy makers always meant to safeguard the Indian women's rights in the society; civil rights, political rights religious rights of women in society etc. This is especially seen through the fundamentals of rights which is provided in the constitution of India. Judiciary has played an important role in protecting and uplifting the social and religious rights of women in the society. This is evidenced by different judgments like granting entry of women in temple, declaring triple talaq as unconstitutional.

Article 44 states that, "the state shall strive to provide to its citizens UCC throughout India. The aim of UCC is to replace the personal laws of the country. The aim of the UCC is to replace the personal laws for each religon. The provisions of the act are about the subjects like property, inheritance, marriage which would replace the personal laws made for each religion. In other words, the act being proposed was aimed at formulating a standard code that was to be applicable in the country regardless of the religion practiced**.** The personal rules in customary legal system have gender inequalities by embracing patriarchal norms. Thus, the framework of UCC ensures that equality to women in their affairs establishing secularism and constitutional provisions of gender equity. The central focus of UCC is constitutional morality against Sabarimala verdict. UCC strives to strike down discriminatory practices followed in religious laws and practices while preserving the right of customs. Preceding the execution of UCC, it is necessary that social discussions are undertaken in the recognition of their rights within the legal space protecting the constitutional provision of gender equality.

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Bid Rigging: Challenges Posed By the Market Characteristics of the Construction Industry of Kerala and Its Legal Implications

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Abstract

Bid rigging, present in procurement processes, is posing a significant challenge to fair competition. This paper gives a particular focus on the construction industry of Kerala. Analyzing the case of Kerala, this paper identified several market conditions that hinder the decentralization of contractors and the eradication of bid rigging: a relatively small number of contractors involved in the schemes, intense interconnectedness of industry players, political influence, the sector's fragmented markets, and a heavy focus on the public sector contracts. These market characteristics lead to a situation where bidders can meet, thus making it hard to control the market for competitiveness and transparency. Organizational and local factors affecting the Kerala procurement market also hinder bid rigging elimination strategies. Another great difficulty in eliminating bid rigging in Kerala is the problem of anonymity in the bidding processes since the players are barely diversified. This limited competition leads to a situation where few players can monopolize the bidding processes, which, in turn, squeezes any opportunities for fair competition. Under India's Competition Act, bid rigging can result in fines and corrective measures imposed by the Competition Commission of India (CCI). In some cases, collusion may lead to criminal charges or contract nullification, especially if public funds are involved. Also, public procurement laws can cause blacklisting of the colluding firms and compensation of the damages to the affected parties, thus, suggesting the need for judicial oversight in preventing collusive practices. However, in implementation, they offer real challenges and fail to generic mechanisms that can help detect collusion among businesses regulated by the act.

Keywords: Bid Rigging, market characteristics, collusion, competition

2. Introduction

2.1 What is Bid Rigging?

Bid rigging is one of the practices that exist in the bidding process hence reducing the strength of fair competition Instability and deteriorating the market integrity. It refers to a scheme among bidders that helps them to ensure that a particular bidder emerges as the winner. Such manipulation of the outcome leads to high costs, lack of transparency, and hurt to economies and stakeholders. This practice is considered illegal under competition and antitrust laws worldwide as it has a significant impact on market efficacy and fairness. In 2013, construction firms in Japan were fined for price-fixing on public highway projects.[1] Similarly, in 2021, the Competition Commission of South Africa detected bid rigging in the construction of stadiums for the FIFA World Cup, in which they observed that collusion from contractors inflated prices paid and compromised fairness[2]. Hence, a heavy focus on the above shows the existence of the practice and implies its harmful effects on economies.

2.2 Types of Bid Rigging

Bid Rigging is usually observed in several forms. Each of the types of such practice employs distinguished manipulation methods. Firstly, Bid Suppression is a situation where bidders voluntarily abstain from bidding. This is done to reduce competition and ensure the pre-determined winner gets the bid. Secondly, complementary bidding, also known as Cover Bidding, is a situation when firms bid on high and unfavorable terms. This ensures that it gives a false image of intense competition while providing the desired bidder wins. Thirdly, in Bid Rotation, each bidder takes turns to win, i.e., one firm in one round gets the bid, the second firm the second, and so on. Finally, Market Allocation is when types of markets, based on geography, customers, or other factors, are allocated and divided among them to bid on. These are direct forms of rigging found especially in public procurement. Such practices hamper real bidders from entering into the market and winning bids. This significantly affects the characteristics of the market. However, whether the static characteristics of the market are an underlying road for the bidders to collude is something that needs discussion about.

3. Economic And Legal Overview of the Concept of Bid Rigging

3.1 Economic Implications

The implications of bid rigging are very grave and diverse. The major problems include economic costs, as collusion artificially inflates prices and adds to cost burdens on government and private clients. It has been found in some studies that bid rigging can inflate costs up to a range of 20 percent to 30 percent, which in turn drains public resources and hurts the taxpayers.[3]The reduced transparency also causes damage to the procurement system and discourages actual competitors. Besides, collusion often results in low quality since the contractors prefer higher profits over value creation. This, finally, leads to a lack of innovation, no incentives, and inefficiency in adopting more advanced technologies.

3.2 Legal Implications

Preventive measures and constant enforcement measures should be enacted to rid the nation of bid rigging. If there was a tendency of bids at high prices or predictable rotation, then such bids could be thought to be prone to collusion. Greater transparency and accountability in digital procurement systems have fewer chances of being manipulated. Public awareness of the legal and economic consequences of bid rigging and rewards to whistleblowers for unethical practices add to the strength in fighting such malpractices. Such serious violations of competition and antitrust laws attract legal implications for people who have been found to engage in such practices. Worldwide, it is illegal due to the reasons of undermining free-market competition, increasing costs, and sometimes misusing public resources. In India, the US, and the EU, bid rigging is strictly prohibited by the applicable laws, respectively. In the United States, it is prohibited by the Sherman Antitrust Act[4]; in the European Union, by the EU Competition Law under Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU)[5]; and in India, by the Competition Act, 2002[6]. Among the legal punishments for anti-competitive bid-rigging are high fines, imprisonment of the people on trial, and reputational damages to companies. The U.S. Department of Justice's Antitrust Division, the European Commission, and the CCI in India are all regulatory commissions that are invested with powers to investigate and take action in prosecution. Depending on the actual or intended revenue

from such acts, the latter may be punished with millions of dollars for those convicted. For example, in the laws of the EU, a fine can be as much as 10% of an organization's worldwide annual turnover[7]. Besides, the participant in tender rigging may be liable to personal and individual imprisonment. For example, under some laws, such as in the U.S., it is punishable by as much as 10 years behind bars[8]. In addition, a company that is proved to have engaged in tender rigging would be barred from any more tenders, public in nature. This, in turn, causes long-term financial as well as operational damage. Finally, victims of tender rigging generally comprise governments, firms, or individuals who can bring a cause of action and sue for civil damages within their jurisdictions. In the U.S., The Clayton Act [9]provides for treble damages three times the injuries caused, for instance. Firms that use the form of bid rigging are also subjected to private litigations whereby competitors or beneficiaries sue to recover losses accruing from higher prices and reduced access to markets, among other reasons.

4. The Construction Industry Of Kerala

The construction industry in Kerala is an important support structure within the state's economy since it provides substantial employment and infrastructural development. This sector includes residential, commercial, and industrial structures. The concrete context of Kerala is reflected in its construction profile; it is replete with potential and potential for difficulties.

The most conspicuous characteristic of the construction industry in Kerala is that it operates mainly on public-funded projects. Much of the activity involves state or central government-funded schemes such as housing schemes, transportation infrastructure, and government buildings. Public procurement thus dominates, affecting market conditions and often determining the profitability of many contractors. There is also geographic and project-specific specialization. Most contractors work in the local environment or are involved in certain types of projects, for example, residential construction or construction of urban facilities. Thus, contractors involve regional expertise, which experience leads to market segmentation and which, in turn, hampers competition and fosters collusion.

The other important feature is the cultural and social relations among contractors. Most contractors keep close personal and

professional ties due to Kerala's well-cemented community-oriented culture. Often, these networks foster informal collaboration but also open opportunities for bid rigging and market manipulation, which distort the principles of fair competition. The construction sector of Kerala is facing economic challenges due to the rising cost of inputs like cement and steel and the scarcity of skilled manpower. [10]All these challenges put financial pressure on the contractors, and in a bid to avoid risks, they are forced to engage in collusive practices in order to secure the contracts.

5. Market Characteristics That Could Possibly Pave The Way To Bid Rigging

5.1 Fragmented Marketing

The construction market in the state of Kerala is highly dispersed; a large number of construction companies are SME based. While many other regions depend on big national or multinational construction companies occupying a significant market share, Kerala's construction also depends on local contractors. These contractors have an essential part in the construction of public and private projects, including the small housing construction and the mid-size infrastructural construction. However, this structure means that there are issues with the competition, as many small firms have limited ability in terms of their financial and technical capabilities.

This market situation makes it possible for small contractors to collude often and form cartels to be able to survive in competitive bidding. Since these contractors work in a cartel, they can control the bidding process and guarantee that the result will be as favorable as possible for every member of the cartel. For instance, in a cartel, some members are supposed to be awarded certain contracts while others provide complementary, low, or no bids at all. They reduce real competition and make the cartel dictate the market forces.

Lack of capital base among small contractors also compels them to engage in these collusive strategies. Because they lack the financial resources and technological know-how required to seek out and win sizable projects on their own, they turn to bid rigging as the only viable strategy to guarantee their survival and simultaneously reduce their risks in procuring contracts competitively. Despite this, the behavior described in the case creates short-term stability for the parties to the collusion while at the same time eroding the market's integrity.

5.2 High Dependence on Public Sector Projects

The construction sector in Kerala is highly dependent on public-sector projects[11]. The largest segment of the construction activities is related to public construction projects that are financed by state or central government agencies, thus placing public procurement at the center of the market. This dependence emphasizes the nature of government contracts as a powerful determinant of the dynamics of employment generation and economic development. Still, it also underlines the vulnerability of the sector toward certain malpractices, namely, in tendering and bidding.

Public procurement processes are particularly vulnerable to malpractices like collusion and bid rigging because of predictability and the high financial scales involved. Large-scale infrastructure projects, by their very nature, evoke considerable competition among bidders. However, this competition may sometimes take a backdoor way because bidders may form cartels to coordinate their actions to influence the outcomes. Such a cartel can bring about collusion in the tendering process and result in high costs and poor-quality projects, which have a knock-on effect on public funds and standards of infrastructure.

The weakness of public procurement in Kerala is magnified by adopting manual and partially digitized tendering methods. [12]That is why such methods do not have the level of protection that is ensured by fully digitalized environments, and this is why scammers can easily work through the identified weaknesses. For example, limited transparency and weak oversight mechanisms in such systems create fertile ground for bidders to exchange confidential information, set predetermined bid outcomes, or exclude competitive participants from the process.

5.3 Region-specific and project-specific contracts

The specialty of contractors in the construction industry of Kerala is characterized by significant regional and project-specific specialization. In this context, it appears that firms are more segmented according to region or type of project, for example, residential construction, road construction or urban water management. They probably have benefited from such specialization by having the knowledge of the conditions on the ground, the resources that would be available, and the stakeholders already in

place. While this can create efficiency and expertise in some areas, it also creates conditions that are ripe for market segmentation and anti-competitive practices, such as bid rigging.

Market segmentation stemming from geographic or project-specific specialization makes collusion among contractors easier. Firms working within clearly defined boundaries—the geographic or project-type variety—are able to allocate territories or categories of projects among themselves. This distribution enables them to eliminate competition by agreeing to refrain from each other's area and bids. Such an agreement has created an artificial market partition. There would then be a surety that the colluding contractors will receive, eliminating the uncertainty that arises during a competitive tendering process.

Geographic restriction exacerbates the problem by not allowing other firms to enter a certain local market. For example, the logistical hurdles, unfamiliarity with the requirements of the local regulations, and opposition from well-entrenched local players could hamper contractors coming from other regions. Such challenges limit competitive pressure in those regions and give local cartels better control over bidding processes.

5.4 Political Influence

Political and bureaucratic influence indeed dominates the award of construction contracts in Kerala. Relationships with bureaucratic officials or being politically affiliated often determine who obtains the more lucrative projects. Political patronage is also used by most as a means to secure tendered government contracts and acquire project awards. Although these linkages may expedite more timely decision-making and project implementation at times, they pose significant threats of nepotism and collusive practices that have undermined the ideals of competitive, fair, and transparent bidding.

Political influence breeds an atmosphere in which collusion and other forms of cartelization are tolerated and even ignored. Those political patrons with close ties to some contractors may be accorded implicit protection that allows them to create cartels and collude over tendering processes, unafraid of consequences[13].

The use of favoritism in evaluating tenders further worsens the problem since it gives politically connected contractors or cartel members an undue advantage. The process is sometimes affected or

directly/indirectly motivated by political or bureaucratic interests for one or another selected tenderer. This preferential treatment sometimes results in leniency to meet the qualification criteria set out by the tender specifications, a higher price preferred contractors receive, or just reasons on very trivial grounds being adopted for eliminating serious competitors. In both the processes above, public trust in procurement processes and discouragement of competitiveness will follow.

Another way through which political and bureaucratic influence feeds into bribery when contractors give money or other favors to officials for tender outcomes in their favor. Such bribes will ensure that cartel members never report the collusive agreements, meaning cartels will act with immunity. Furthermore, corrupt practices can be extended to tender specifications or timelines to accommodate the capabilities of favored contractors, thus reducing the possibility of a fair bidding process.

5.5 Social Networks and Connections

Cultural and social networks are very important in influencing Kerala's construction industry since they promote close personal and professional relationships among contractors. Such connections are often grounded on shared cultural values, community ties, or long-established business associations. While it is possible for such networks to facilitate cooperation and mutual support in legitimate ways, they also create an environment prone to anti-competitive conduct, such as bid rigging. Often deeply entrenched, the nature of these relationships obscures where collaboration ceases to become collusion in practice. Consequently, often, it becomes impossible to either detect or act against them.

Local customs and practices often reinforce informal agreements among contractors, which would enforce adherence to collusive arrangements. In some contexts, cultural values may even accept and consider such collusions a necessary evil in order to survive in an oligopolistic market. The prospect of social isolation or tainting reputations within tightly-knit groups also keeps the members of the network from deviating from agreed-upon behaviors. Because of this, cartel participants are able to act with certainty that others within the network will respect the terms of the collision.

These networks also serve as gatekeepers, whether it is a contractor from a different region or a firm not belonging to the social network. Such exclusionary practices give local cartels a monopoly in certain markets or types of projects and cut competition. This hampers creativity and effectiveness while raising the price of endeavours, thus straining the public purse or a private contractor.

5.6 Increasing demand for affordable infrastructure

Kerala's rapid urbanization and the growing demand for affordable housing have increased the number of construction projects, especially in the urban and semi-urban sectors. Most of these are undertaken by local self-government bodies[14], housing cooperatives, and similar organizations to address the housing needs of low- and middle-income groups. With this high number of projects, cartels can easily do their operations by rotating the bids among them. It is through the rotation that cartel members share the same winning bid after taking turns; hence, there will always be one member getting his share after some time. This brings about an artificial reduction of competition and normally inflates the prices of projects, thus diverting the funds elsewhere from whom they were destined for affordable housing programs.

Smaller-scale projects, which are typical of many affordable housing schemes, are more susceptible to cartels because of the lessened regulatory oversight. Typically, such projects fall below the thresholds that would normally trigger more rigorous monitoring or auditing mechanisms, thus making it easier for the cartels to operate undetected. This is made worse because many of the local self-government bodies or cooperatives are informal and may not have the capability, human, or institutional capital to detect and address collusion issues. As such, the small projects transform into the primary focus of exploitation by these contractors.

5.7 Economic Pressure

The major issues of concern to the contractors in the construction industry of Kerala are economic pressure and resource constraints. Some of the essential inputs that contribute to a high cost include cement, steel, and labor, which exert pressure on the financial requirements of contractors, particularly those working on several or extended projects. Furthermore, there are insufficient resources for construction materials and an adequate workforce,

meaning that with the increased number of buildings, many more are vying for the limited stock. These economic forces impact not only the financial profit of contractors but also the practices that distort the tenders' integrity, such as bid rigging.

The growing costs of inputs put pressure on the finances of contractors, which makes them seek to form cartels to manage risks. By so doing, contractors can be awarded contracts that are associated with lesser fluctuations in terms of cash flow and, at the same time, reduce their susceptibility to losing out on their financial risks. While bid rotation, market sharing, or agreed upon winning bids help contractors avoid high levels of competition that erode profit margins. To contractors facing economic pressure, such measures give a perceived 'safety' in a foul game at the cost of the principles of competition and the public.

This is made worse by the fact that resources are scarce in the contractors' industry, forcing them to act in unison in regulating supply and, therefore, price. Almost all the materials, aggregates, and cement are not freely available and are sufficiently rare to compel the contractors to regulate and even ration them so that one among them does not run out of a crucial material.

6. Laws in India Governing the Prevention of Such Practices

Bid rigging in India is strictly regulated under the Competition Act 2002, particularly Section 3(3)[15], which prohibits anti-competitive agreements, including those aimed at collusion, price-fixing, and bid rigging. Market characteristics such as geographic specialization, public procurement dependency, and cultural networks are key factors that complement such practices. Contractors dividing regions or project types to suppress competition violate Section 3(3)(a), [16]which prohibits market partitioning. The penalties for such collusion are severe, including fines of up to 10% of turnover for the last three years or three times the profit, investigated by the active and vigilant Competition Commission of India (CCI).

Public procurement dependency and manual tendering also contribute to bid rigging. Violations in public projects are punishable under Section 3(3)(d)[17], with contractors facing debarment and criminal penalties under the Indian Penal Code (IPC)[18] for fraud or corruption. The General Financial Rules (GFR) 2017[19], mandate transparency in procurement, and violations often lead to audits or

investigations by the CCI. Similarly, political patronage and favoritism, which are not tolerated in any form, are punishable under the strict Prevention of Corruption Act 1988[20], with imprisonment of 3 to 7 years for officials and contractors involved in corrupt practices.

Cultural networks that normalize collusion are scrutinized under Section 3. Even informal agreements can attract penalties if evidence of coordination exists. The Competition Commission of India (Lesser Penalty) Regulations, 2009[21], protects whistleblowers, encouraging the reporting of such activities and incentivizing disclosures.

Economic pressures and resource scarcity leading to cartels fall under Section 3(3)(b)[22], which prohibits restricting supply or manipulating material prices. Political interference leading to market monopolization is addressed under Section 4[23], which governs the abuse of a dominant position. Combined with stringent enforcement, these regulations aim to safeguard market integrity and deter anti-competitive practices in India.

7. Conclusion

The data on bid rigging in the construction market of Kerala indicates that market features play an important role in favoring collusion. These are specialties by region and project, cultural and social relations, and economic constraints on contractors and the role of public procurement. Government-funded projects, which account for the greater proportion of the industry's work, constitute the procurement process as a key area of fraud and corruption. These problems are compounded by low transparency and the use of manual tendering processes; there are possibilities of bidders' collusion. Geographical division and division according to project types also subdivide the market to allow contractors to work in cooperation to divide territories or types of projects between contractors, thereby reducing competition. The overall effect of such market segmentation is to guarantee certain patterns of behavior for the collaborating agents, as well as exclude potential competitors.

Cultural and social networks have a two-fold function, which involves cooperation and collusion. Such community-based values create a culture that accepts corrupt practices, especially collusion, as the common survival tactic in a competitive environment but with scarce resources. Lacking formal contracts, people do not want to

violate these understandings of the game for social or career consequences. Furthermore, economic reasons like high costs of raw materials and inadequacy of resources make contractors look for stability through combination. Bidding risks are reduced because cartels influence the bidding process in a way that guarantees them contracts and adequate cash flows for the members.

These are made worse by political and bureaucratic influence making the environment weak and easily fertile for collusion. This is unhealthy for the market since it distorts the integrity of the market, leads to increased costs of projects, decreases innovation, and, most importantly, erodes the public's trust in the bidding process. Taken together, this illustrates how it is not only that market conditions are not neutral but that they, in fact, facilitate bid rigging. These structural and systemic problems suggest that it is feasible to prevent such malpractices and to create a competitive, fair, and transparent market.

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An Overview Analysis of Guidelines for Prevention and Regulation of Dark Patterns in India

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Abstract:

Dark patterns are deceptive methods introduced by the creators of a website or a page that push consumers to choose or not to choose, perform or not perform actions that they are usually not interested in. This has contributed greatly to producing hurdles for consumers while managing online interfaces, resulting in a corrupt user experience. It can be observed as a product of the technological advent and digital dawn. The principal objective behind the paper is to create awareness of the existing frameworks and practices that facilitate the prevention of these deceptive practices in India. The paper also focuses on exploring the different kinds of deceptive patterns which are recognised in India while also understanding the consequences of each, helping to produce a better user experience. Furthermore, the Consumer Affairs Ministry and the other bodies regulating the policies of consumer affairs have projected various suggestions that the paper would critically examine efficient and effective policies that could mitigate the manipulation by the designers through these patterns. The paper evaluates the effectiveness of such existing frameworks and policies and also provides insight into the initiatives taken globally by providing a comparative analysis between the current rules in India and global regulations.

Keywords*: Dark Patterns, Consumer Protection Act, Central Consumer Protection Authority, User Interface (UI), User Experience (UX).*

Introduction:

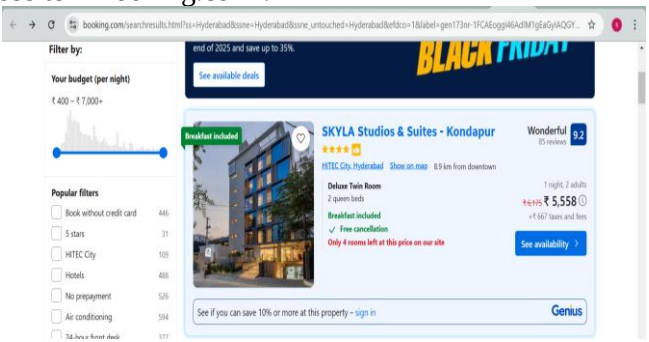
"Dark patterns take advantage of the fact that users don't read the fine print they rely on instinct, speed, and trust."

— Harry Brignull, Creator of the Dark Patterns Concept

The quote encapsulates that there are patterns through which the consumers get manipulated, where their original instincts to buy

certain goods have been changed, and they will buy other things by which they are affected, known as dark patterns. The Quote also states that these particular patterns used by the companies take advantage of the consumers that they often trust the websites and proceed instead of thinking about what they are buying and what they see on the site without conducting any detailed and careful examination of the products due to hurry and trust on the sites.

In these very days of the digital world, the user experience and user interference have become a prominent concern for web designers and companies. Half of the population using the online website through the internet, and most of the users are victims of dark patterns, and they do not intend to make purchase that only on the reason of the false urgency, drip pricing are the types of Dark patterns[1]. There are multiple dark patterns. One of them is represented in Figure 1, which is a dark pattern from the Booking. com website – Booking.com[2].



Source: Booking.com only for visual representation

In the figure above, the website indicates that there are only four rooms left! This design encourages consumers to make immediate purchases, potentially leading to misconceptions about the popularity of a specific product. It may also misrepresent the actual quantity of the product available. These tactics can be considered manipulative techniques employed by companies, often referred to as "Dark Patterns," which aim to entice consumers into making hasty decisions.

Research Methodology:

An Analysis of Indian Legal Framework This study will conduct doctrinal research by reviewing and examining the current legal framework applicable to dark patterns in India. Additionally, the (CP Consumer Protection) Act of 2019[3], through the Central

CPA (CCPA), serves as a key instrument for addressing unfair trade practices, of which deceptive design patterns in e-commerce are a significant component.

What are Dark Patterns?

The term "dark patterns" was first introduced in 2010 by Harry Brignull, a user experience (UX) designer from the United Kingdom. According to him, dark patterns are design strategies used in user interfaces to trick website users into actions they did not intend to take[4]. DP (Dark patterns) are UI (User Interfaces) designed to confuse consumers, prevent users from expressing their true preferences, or pressure them into taking specific actions. These manipulative designs often exploit cognitive biases to persuade online shoppers to make unwanted purchases or reveal personal information they mainly choose to keep private. DP (Dark patterns) are mainly made by the user interface designers focusing on confusing and manipulating the consumer's decisions they typically force consumers to purchase the product[5] they don't need, and sometimes the consumers face redirecting issues multiple times, which is called as nagging where the websites prompt users to click on certain options which they are not intended to for example, accepting the cookies, allowing access permission[6].

In today's digital landscape, where the Internet is accessed by half of the population, they control and buy anything from anywhere, irrespective of where they are staying. This is one reason why companies take advantage of consumers to manipulate their buying decisions, i.e., they get tricked instead of buying one product but buying another product due to the dark patterns, which is considered an unfair trade practice in India. To grasp the concept of dark patterns, the fundamentals are to understand what (UX) user experience and (UI) user interface are. User experience is what the consumer experiences on the user interface, which is created by the interface designers to present the products on the websites to make it feasible to purchase or analyze the products from other stores and websites and create evocative experiences for consumers to acquire the product they want. This includes elements such as branding, design, usability, and functionality. Simplicity in technology is important because it enhances usability and ensures that users can easily interact with devices and applications. A significant aspect of (User Experience) UX design also involves creating related

experiences, such as packaging, marketing, and post-purchase support. The goal is to ensure that the product meets the needs of the user and addresses their challenges[7].

Types of Dark Patterns Recognized in India:

The Central CPA (C Consumer Protection Authority) has recognized 13 types of DP (Dark patterns) and passed a bill through a notification on the guidelines for Prevention and Regulation of Dark Patterns, 2023.

1. **False Urgency:** is a misleading strategy that convinces consumers to purchase or take immediate action based on false claims regarding the limited availability of products.
2. **Basket Sneaking:** "Basket sneaking" is the addition of extra goods and services, charitable donations or at checkout from a site, a donation without previous agreement of the user, with the effect that the total amount payable shall be increased"[8]
3. **Confirm Shaming: "**It means a phrase, a video, an audio, or any other form of communication whereby fear, shame, ridicule, or guilt is created in the mind of the user."[9]
4. **Trick Question:** The trick question is which entices the consumers to buy what they don't want, such as Yes! I would like to continue my subscription or NO! I will keep my subscription, which makes consumers confuse, and most of the time, they click on NO.
5. **Subscription Trap**: While subscribing, the users were notified that they can cancel their subscription anytime, but when they want to cancel, the users won't be finding the option to cancel sometimes automatic subscriptions without any notification for the subscription.
6. **Interface Interference:** This dark pattern makes the user experience in the user interface difficult it disrupts he users by using trick like push notifications multiple check boxes etc.[10]
7. **Bait and switch**: It is a deceptive sales tactic where a product or service is advertised with the intention of attracting customers, but then a different, often less desirable, item is offered or the terms are changed.[11]
8. **Forced Action:** Users are compelled to take an action which they might not want by making alternative choices difficult or unclear. This tactic limits user autonomy and can lead to unintended outcomes.

9. **Drip Pricing:** It conceals the prices from users during their first interaction, later revealing them after they add the items.
10. **Disguised Advertisements:** It is a type of trick where they mask the advertisements, which makes the user click on them, but the advertisement is false[12].
11. **Nagging:** Nagging means making the consumer do a particular action repeatedly, which they made already, for example, downloading an app again and again.
12. **SaaS Billing:** When a user subscribes to a free trial for three months, they are often promised notifications regarding the transition to a paid subscription. While users may believe this is the case, it can be a deceptive tactic employed by companies, as they often fail to notify customers when the trial converts to a paid subscription.[13]
13. **Rouge Malware:** One of the dangerous dark patterns that leads the users to install malware in their devices but by using positive acquisition to obtain money from users.

Above, 13 major dark patterns identified by CCPA are shown, but a much lesser regulatory check on these practices by Indian businesses is there. The European Union and the US (United States) have strict regulations against their use, so it protects the consumers' personal data; hence, this provides a more intentional experience of surfing through the websites.

The applications of These Guidelines shall apply to:

1) All platforms where they offer goods and services in India
2) Advertisers
3) Seller

Ethical and Legal Concerns:

Dark patterns or manipulative design techniques aim to user behaviour against their best interests, which raises an important question of how these deceptive patterns are both ethically and legally, especially in the situation of a rapidly growing digital economy like India. Ethically, they violate user autonomy, compelling people to do things they might not do if they had a choice. User autonomy includes sharing personal data mainly in the practice of forced action where they mislead our email request access while signing in to the website, making accidental purchases such as basket sneaking, or subscribing to services to which they haven't subscribed without obtaining proper consent.

These patterns are outright violations of the fundamental pillars of informed consent and fairness found under which ethical design companies have to abide. Also, these tricks will damage the trust of the platform as well as the users' trust. Seeing as users know they were duped, there's no limit to how far the loss of trust extends beyond the service used to take you, to all of digital space altogether. What's particularly cutting edge here is that this is a particularly large population of people who came into the internet for the first time, who didn't even have a basic knowledge of what kind of tactics these are. It also includes such others that have been slated as pre-ticked boxes to give consent and hidden settings for privacy, which not only compromise on the users' privacy but also raise very deep concerns regarding transparency and corporate accountability.
More specifically, The Indians who use the internet have very little digital literacy due to the access to technology is very less and there are large educational disparities not aware of what they clicking on when they visit a particular website, which consists of deceptive patterns that lead fewer literate users to unknowingly provide their data and face its consequences placing them in a spot where they can neither identify nor resist such practices of manipulation.

Comparative Analysis of Guidelines in India and Other Countries:

As the regions change, the practices of deceptive methods also vary. From the Indian perspective, the regulations that currently address the issue of dark patterns are only directed towards the CPA, which provides elaborate provisions for protecting the rights and confidentiality of consumers. Unlike the policies provided under the provisions of GDPR in the EU or the CCPA in California, India's manipulative methods range is not at its peak.

Currently, the CPA 2019[14] and the IT Act of 2000[15] have successfully conveyed to consumers regarding the deceptive practices involved in the UI/UX designs.Consumer privacy[16]has been protected by the CPA, which is the only legislation that emphasizes on addressing the tricks and deceptive patterns used by companies. The amendment of CPA 2019 primarily aims to protect consumers from 'unfair trade practices'[17]and establishes an authority named CCPA (Central Consumer Protection Authority) to monitor and enforce their rights and remedies available related to consumer concerns. The latter of these two acts does not have a definition or

provisions for dark patterns, but the CCPA has made multiple recommendations and suggestions to the higher authorities to enforce laws on misleading advertisements in e-commerce. Consumer Protection Act, 2019 It particularly focuses on unfair or deceptive trade practices, and in many cases, these areas overlap with dark patterns techniques such as hidden fees, bait-and-switch, coercive subscription models, or even false claims about a discount and pre-checked boxes where one uses trust against you-this could all be breaches. Similarly, the IT Act 2000 has provisions on electronic commerce and data protection, such as Section 66D[18], which prohibits deception over electronic means, and Section 43A[19], where corporate bodies are liable to protect their own sensitive personal data or information. Again, both are bound to have some weaknesses in itself. The Consumer Protection Act primarily works on consumer complaints; thus, many manipulative practices are not addressed due to the lack of awareness among users. The IT Act was drafted in 2000, and it is outdated with regard to the modern challenge of digital design. Hence, though these provide some protection, they fail to address the nuances and the evolved nature of DP (Dark patterns) in the Indian digital landscape.

Even though strong provisions exist for consumer protection in India, the scale and rise of dark pattern behaviour require specific interventions. Because Dark Pattern Guidelines are considered aligned with existing Indian consumer-protection legislation, although the success and legitimacy of these guidelines and, indeed, their existence per se may be argued upon, this Dark Pattern Guidelines have also focused on something like intent to mislead a user, which is the nature of an abstract concept difficult to be measured in objective number or terms. In addition, the Dark Pattern Guidelines appear to include all 'users' and not just 'consumers', a distinction which may have implications today. A closer reading of the guidelines, especially the definition of 'dark patterns' wherein deceptive design practices are equated with consumer protection, demonstrates that these are created and implemented for the protection of 'consumers' alone. Primary legislation may be able to address this problem. The Dark Pattern Guidelines cannot possibly capture all dark patterns that exist in the digital world. It has guidelines for designing strategies that lead to misleading

advertisements, questionable business practices, and even violation of consumer rights.[20]

In order to protect consumer rights, the CCPA (Central CPA) issued "Guidelines for Prevention and Regulation of Dark Patterns Act 2023" U/S 18 of CPA 2019[21]. On 30th November 2023, listed 13 dark patterns which should be prevented and regulated. There is a list of 13 designated dark patterns in the standards' Annexure 1[22]. These include trick questions, nagging, drip pricing, disguised advertisements, false urgency, basket creeping, confirm shaming, forced action, subscription trap, interface interference, and bait and switch.

The CCPA does not have any authority to take action against the use of DP (Dark Patterns) under these guidelines. Unlike the CPA, the CCPA doesn't have the power to take actions to protect consumer rights; the CentralCPA has to provide stakeholder feedback and specify if any other dark patterns are recognized as dark patterns under Annexure 1 of the guidelines for prevention and regulation of dark patterns[23]. However, the CCPA has the power to execute its actions on violations of the rules and guidelines provided in 2023, whereas the Consumer Protection Act does not have the feasibility to perform such actions on violations. This exclusion of a certain segment from the conclusive iteration of the Dark Pattern regulations might be interpreted in several ways, including both pragmatic and strategic factors. A reasonable explanation for this is that the regulators thought the section was too broad, too vague, or too complicated to be enforced practically. The task of coming up with regulations targeting such misleading design techniques as dark patterns requires careful balancing on the part of government actions between the protection of consumers and giving honest businesses room to experiment. If ambiguous, this would mean too much regulation, and omission could lead to avoiding unintended consequences like holding back actual digital design principles. Also, the Ministry of Consumer Affairs should pass bills and guidelines not only to prevent and regulate but also to address how these tricks use the user's personal data and how these deceptive or dark patterns debilitate the IT Act of 2000[24]and the recent amendment of the DPDP Act, 2023[25].

Global Perspective on Dark Patterns:

The term Dark pattern itself has been coined in global countries where it has been largely recognized in the United States and European countries. In the US, to eliminate and prohibit these types of patterns, they amended specifically "to protect the consumers from the purposeful and deceptive gathering of personal data" and made changes in the California Consumer Privacy Act[26]. In the EU, the GDPR (General Data Protection Act) [27]governs this aspect, particularly in U/a 25(1) and (2).[28] Article 25 states that the designers have to provide the prior information to the users that their personal data will be maintained privately and there will be encryption by the data controllers in their user interfaces "by default as well as by design." However, this article does not guarantee full potential control over the user interface. Sometimes, default settings or compulsory actions might be used to expose the user's personal data.[29] Recent amendments in Europe have greatly addressed the dark patterns, such as the DMA (Digital Markets Act) and the DSA (Digital Services Act). Canberra Country, Australia, has amended a law to address these dark patterns. CDR's (Consumer Data Rights) objective is to protect data sharing online, which requires the consumer to click on the check boxes for their consent to the particular website using the data of the user to third parties, which is a compulsory check before using.[30]

Conclusion:

The Dark patterns these days have been growing rapidly the regulatory body taking a step forward by passing a bill for preventing and regulating these dark patterns is the right move also, it has to focus on restricting companies from sharing the data of the users without consent where the ministry can take reference through Australian government law which CDR and mandate compulsory consent button before experiencing the interface. Also, restrictions should be imposed on the main dark patterns, such as nagging and false urgency. There can be a mandatory guideline for every company that they should prepare compliance agreements that they use dark patterns but in an ethical way that assures the protection of user data. The importance of CCPA is related to dark pattern regulation; it puts forward the emphasis that success leans on implementation and the continuous development of a legislative framework as it keeps evolving to respond to new challenges in legal

relations. Considering that there should be consumer awareness regarding these, and every user should be aware of these patterns. The law created regarding DP (Dark Patterns) is relatively new, the paper is absolutely right in observing that its future evolution would be tighter legislation that could better deal with complications connected with dark practices.

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Waqf Board and Its Overview and Functions : [1]is It Compliant to the Democratic Functions and Does It Harm the Freedom of Other Individuals

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Abstract

It is this case for the waqf board which is the body for the management of the Islamic institutions that are involved in the execution of endowments of religious and pious uses. While there are promise to its socio economic potential in its functioning poses profound concerns over its integration with democratic values and suppression of civil liberties. The paper had the object to examine the background of the formation of the waqf boards and some issues affecting these boards today such as corrupt practices, poor performance and misuse of non- waqf assets. Where the detraction of the waqf act decrease boards powers because these undermine constitutional principles of equity and secularism; others champion their role in the development of the society and as agents of preserving culture. The main aim of this research is to scrutinize on that whether Waqf Boards democracy compliance and associated implications with the help of the legislation analysis and opinions from stakeholders as well as governance reforms.

Keywords- Waqf Board, Democratic Compliance, Non Waqf Assets, Endowments, Stakeholders

Introduction

The waqf board is an official human institution that regulates the Islamic charitable endowements in the republic of India. They have a dynamic role in managing properties such as religious institutions, educational institutions, and social welfare properties.

Pending approval from the Ministry of Islamic Affairs, the institution intends to promote religious teaching of charity and community development. However its works have created concerns about what current democratic standards it meets and whether its activity threatens freedoms pof the citizens. Thus the focus of this paper will be on the work in response to democratic principles and with the respect to human rights or not. Waqf which is a form of Islamic charitable institution has really aided in the advancement of the socio-economic aspects of the various communities Waqf which is a charitable endowment system throughout the Muslim community has really aided in the advancement of the socio-economic aspects of the various communities the Waqf has really helped in the advancement of the socio-economic aspects of the various communities The Waqf institutions currently possess great potentiality regarding the societal issues of the country Usually, these structures - all for the religious, educational, and charitable purposes - tend to represent the separation of the religious mandate and that of the care of the community Nevertheless, Waqf boards in India still remain faced with, and continue to grapple with a multitude of factors that hinder the fullest realization of the Mandate for which they were created, and some of these include: Encroachment Corruption Poor Governance and Poor transparency. Unable to deliver their services to the intended beneficiaries as such, the use their huge resources for causative and dramatic socio-economic transformation becomes a process rather than an event. In this respect, there has been the attempt to improve the legal structure of the Waqf institutions through the Waqf Act of 1995 as modified during subsequent circumstances. However, these weaknesses are often said to be addressed by the narrative that such measures are not appropriate for the governance of typology of record management, political meddling in operations, and the presence of equipment. In the recent past, some changes have already occured, such as giving evidence of digit[1]

Administration of Waqf

Waqf Administration in India is operational formulated within the historical and socio legal framework in the country. Elucidating the functions and challenges of State Waqf Boards which manage lands and buildings for educational and charitable missions, Tabasum Rasool, in her paper. Management of the said properties is

however marked by a number of loopholes such as ineffectiveness, absence of liquidity and poor internal control mechanisms. Scarcities of documentation on the waqf properties resulting in human handling and interference is amongst the most basic difficulties of waqf asset administration. In addition, it is addressed by poor infrastructural development and inadequate trained manpower in these environments. Legal limitations including but not limited to cost of law and prolonged court procedures further discourage the maintenance and best use of waqf properties. Political forces and corrupt practices also intervene the management of the board of these companies and this affect the operations. Starting point of the Indian WAMSI for the better functioning of the Waqf Assets is an improvement for the purpose of enhancing the accountability over the management of records. On the other hand, It should be noted that WAMSI has been rather slow and patchy, its effectiveness has been constrained.[2]

Ownership and Management

Under Islamic law, the ownership and the management of the specific principles of the waqfasperpetual charitableendowment. A legal definition may put a founder as an analyzing factor, because its own ownership is legally defined not to belong to the founder, whereas others have said Allah and even others say that ownership lies with the beneficiaries themselves. However, this ownership is not full since the beneficiaries cannot sell the property, or utilize it in ways which are prohibited by the founder. Once a property has been declared as Waqf it cannot be altered unless by the court; and this normally entails swapping another property I.e of similar value and use. The responsibility for the administration of Trust is provided to a person referred to as Mutawalli who is permitted with the responsibility of the management of the Waqf property in a way that would envisage the possible highest income necessary to sustain the beneficiaries. Another approach was to look at cases where the remuneration paid to the Mutawalli for the work done is evident or not clearly stated in the Waqf document; where the remunerations are not stated, the Mutawalli is either operating on his/her own volition or seeking legal recourse. It remains worth to note that Judiciary has a momentous part in interpretation of legislation and thus in administration of the Waqf since most of the modern Muslim nations possess departments or ministries relative to the waqf and

religion. In addition, Waqf management cannot use the revenue of the Waqf property for other purposes if this is not permitted by Shari'ah and if it is feasible. If it is no longer possible the revenue should be transferred to the nearest general charitable objects or to the relief of the necessitous which are the general charitable purposes of which are the underlying principles of Waqf. Altogether, it is possible to conclude that directions of Waqf ownership focus on charitable and perpetual usage, whereas there are such components as management of the Mutawalli, and judicial check as a requirement for corresponding adherence to the founder intention.[3]

Acquistion Powers of Waqf Body and Degree of Arbitrary Nature

The acquisition of Waqf land in India has often been criticized as arbitrary, with significant legal, social, and ethical implications. Waqf properties are religious endowments that are intended to serve charitable, educational, and religious purposes and are protected under Islamic law and domestic legal frameworks. However, instances of arbitrary acquisition, often facilitated by political interference and weak governance structures, undermine the sanctity and purpose of these properties. Critical of these is the general grant of very wide powers under current statutes that enable Waqf Boards to declare property to be waqf with only a cursory and questionable examination. The discretionary exercise under these provisions frequently throws open issues of title where others have rights which the order has not followed natural justice in the procedure leading up to the order. Furthermore, corruption, lack of transparency, and poor record-keeping exacerbate the problem. Encroachments on Waqf land by private entities or government authorities have been documented, often justified by vague legal interpretations or procedural loopholes. These actions not only harm the intended beneficiaries of Waqf properties but also erode public trust in the governance of Waqf institutions. The arbitrary nature of Waqf land acquisition underscores the need for comprehensive reforms. Strengthening legal safeguards, implementing transparent processes, and ensuring active involvement by local communities and stakeholders are important steps toward addressing this issue. Digitization of records through systems like WAMSI can also enhance accountability and reduce disputes.The action which can be termed arbitrary natured acquisition by Waqf Board into a private or

even state owned land into Waqf land undermines its intended purpose and creates socio-legal conflicts. Robust legal reforms, transparency, and inclusive governance are necessary to ensure that Waqf properties fulfill their role in promoting social welfare and religious obligations.[4]

Constitutional Validity of Its Acqusition Powers

The acquisition powers conferred on the Waqf under the Indian constitution are constitutional and Come under the provision of fundamental rights and equal protection of laws which are enshrined in the constitution has been debatable. These properties are equally protected as Charitable and religious endowments by Islamic law as well as the Waqf Act, 1995 but the question about the permissibility of such acquisition by the state in law and in accordance with constitution remains a matter of legal debate. Article 31A of the Indian Constitution permits the state to acquire properties for the public purpose on the ground of adequate compensation. Indeed, the arbitrary and excessive exercise of acquisition power concerning the Waqf property often raises this constitutional provision. Opponents insist that the state may often use force inappropriately and without proper explanation contrary to the constitutional rule of natural justice and equity under Article 14 on equal protection of the law. Using the grievance methodology, it could also endanger Article 25 of taking possession of the Waqf lands and property that would protect the political rights related to the freedom of practicing, propounding, and disseminating religion. Since Waqf refers to endowment property for the Islamic religious and charitable activities, the acquisition thereof may infringe on the section of the religious rights of Muslims. This is made worse by the fact that there isn't any standard practice followed for getting Waqf lands and most times the opinions of the Waqf Boards or other related stakeholders are not sought and this leads to complaints of bias. The judiciary has had a critical duty to perform in reviewing such actions on the basis of the constitutional provision. As a result of such limitations, the courts an have stressed the importance of procedural rules as well as safeguarding the religious and social function of the properties. Legal developments usually bring to the forefront neglected areas in the governance domain. Therefore, although the state has the authority in acquiring the Waqf properties

as per the constitution, must do so with principles of equality and religious freedom and the public interest. [5]

Sachar Committee Its Role in Waqf Actions and the Usage of Wamsi

The Sachar Committee was formed in 2005 by J. Rajinder Sachar for collection and interpretation of the information on social, economic & educational status of Muslims in India. The report that they presented in 2006 revealed shocks and shocks of inequity in the amount of Muslim representation in various fields and problems such as the misappropriation of waqf resource. While emphasizing the collective social goal of these properties by pointing out that enhanced management and use of these properties would bring better socio-economic change in the Muslim community. As a result of challenges raised by the Sachar Committee, the Ministry of Minority Affairs of India launched the Waqf Asset Management System of India in 2009. WAMSI is an online, workflow based information system to offer a broad ranging management of waqf properties spread over the State and Union Territory Waqf Boards. In this respect, WAMSI utilizes technologies like GIS and GPS in the exercise of managing waqf assets with the general public. However, WAMSI has its strengths and weaknesses even though the latter affects the efficient administration of the programme as it has been rated as being arbitrary. The current situation of waqf has indicated that most of the properties have been poorly managed, and the problem of encroachment and misappropriation have not been reduced by the introduction of the system. Waqfs being of religious nature, they lack systematic record among which no central registry is available systematically of the properties and the regulation though are applied are not uniformly across the region. This research finds that WAMSI is very useful in addressing the concerns raised by the Sachar Committee. It facilitates the registration, leasing and management or litigation of waqf properties. It guarantees that all the income that originates from such properties is well used for the benefit of the society, . The records will also be digitized by WAMSI which will also look into the efficient way of managing them to avoid cases of encroachment as well as mismanagement hence get the best out of the properties for the social economic development of the Muslims in India. This however implies to transform the challenge that came with ineffective practice and arbitrary practices

to real benefits for community development from the waqf assets. This again narrows down the Sachar Committee findings even more to the issue of effective governance in the process of actualizing the potential of the waqf assets for the general upliftment of the society.[6]

Judicial Perspective on Structure and Working of the Waqf

Indian judiciary has examined nature and functioning of the Waqf boards to see if it actually serves the ideology of welfare in the society. The organizational structure is used by the Waqf bodies to control properties for the religion, charitable, and educational purpose, though it is doubted much because of mismanagement, corruption, inefficiency etc. Thus, Indian courts have played unduly importance to the facets of accountability and transparency of Waqf administration. The judicial dicta have without exception observed that mismanagement of the Waqf properties is indeed fatal for their social and economic revealance. It has been noted that, a number of times the higher courts have directed the Waqf boards to have better governance structures with professional management and technological solutions such as digitization to enhance the preservation of the properties and increasing accountability. Unfortunately, once again, it is the judicial decision that points out that, practically, there is a gap between the theoretical function of institutions in Waqf and what they practically are. Corrupt practices, political intervention and arbitrary decisions reach the courts frequently enough to cast a shadow on the capacities of the boards to achieve objects for the accomplishment of which they have been made stewards. Judges have expressed apprehension as to whether the board can secure its properties or place them to useful employment for the general public. However, the judiciary appreciates the prospect of using Waqf for the promotion of the social causes. If socially efficiently utilized, Waqf assets have the potential of efficiently responding to poverty, education and socio-economic development felt across the Region. Judiciaries have always called for reforms suggesting that stakeholders participate in policy-making processes, and welldefined regulatory structures and effective mechanisms of governance exist. Hence, the judiciary approves the concept of potential social good from the instruments of Waqf but at the same time condemn operational flaws in the system. Judicial review means systemic reforms when the boards

meet the goals it is supposed to fulfill — improve welfare and safeguard common interest.[7]

Immunity of Common Man and How Law Can Act When Waqf Witthold Property

If a Waqf Board is involved in misuse of power with regard to fixing or claiming private properties then; as per law there are remedies available to save oneself and asked the Waqf Board to account for its actions. The Indian Constitution also gives rights in Article 300A to property hence no one shall be deprived of his property except as per the law of the land. It is the courts that scrutinize such actions of the Waqf Board with a view of avoiding the vice. Even in case of the decisions made by the Board in the exercise of its regulatory functions private parties affected by those decisions can seek redress in the civil courts for violation of their property rights under the property laws or through a writ petition at the High Courts/ Supreme Court under Article 226 or Article 32 of the Constitution respectively.The judiciary can check into a perpective where when the waqf board uphold a claim the legality behind it is scrutinized. Like the properties under dispute are in par with the provisions of Waqf Act, 1955 or there are enough backing of evidence to support the claims brought up the Waqf Board that the property is their belonging. When claims are a mere fiction, Courts undo them and give compensation or restitution where necessary. Whereas community participation and awareness measures ensure the society, a proper record of the proceeding before and during the process in property designation is made mandatory under the Law governing Waqf Boards and such proposals in the Waqf Act intend to curtail Board discretionary powers. The method of the system of a choice of various types of cooperation other than judicial, including mediation, can assist in solving the dispute. Citizens are urged to stay awake so that cases of theft and encroachment on other people's land are detected early, for instance, through electronic mapping of properties and consulting lawyers whenever one is in conflict with the other. At the end, legal tools, judicial checks and balances and indulged governance can put a hold into the arbitrary governance and e4xercide of powers of the Waqf Board Enhancing legal reforms particularly through enforcing openness and community participation is a critical for the realization of protection of property rights within people's need for justice.[8]

Waqf Board Acting to Contribution of National Devolopment?

The Socio-economic Potential of Waqf in India: Waqf institutions exercised a much needed social responsibility by providing such vital amenities to the public as education as well as health. This potential has however been spoiled by mis management, legal ambiguities, and land grabbing among other factors. In this book, authors present governance reforms and enhanced legal frameworks together with fintech and crowdfunding possibilities as reassessing the potential of waqf assets that can combat poverty and offer decent development. Such a specific research does exist though there is wider scholarly research available in favor of waqf in development. Experiences from Malaysia and Indonesia indicate how digitisation and better models like cash-waqf and micro finance can create positive socio economic impact. Perhaps the sort of strategies that can address the huge disparities in India or any other country can still be Islamic. There are also some disadvantageous conditions as well. The actual administration and political dynamics pose major challenges affecting the institutional management of wakfs in India and Makes it hard for reforms to be effected. Furthermore, the modernization of the organization is likely to be challenged by traditional stakeholders when for instance, the organisation wants to digitise. They get hampered due to low public acceptance and their credibility and also weak enforcement of the regulatory bodies. Even the following of successful models from other countries may not be easy because India has its own socio - political and legal systems. In conclusion, there is a huge opportunity regarding socio- economic development of the Indian Waqf but unfortunately it requires various types of overhauls. To achieve this, it is also be imperative that issues of governance, legal reforms and advanced technologies will have to be overcome to effectively ensure that the role of waqf in development is realized and the public is put to trust and involve the organizaions. The most critical breakthrough is the ability to harmonize between conventional and postmodern approaches to increase potential[9]

Camparison to Malaysia As A Nation and A Ground of Waqf

The Malaysia and India Waqf board differs in their management and administration of Waqf assets this is due to their difference in the socio-political and legal systems. In Malaysia it is been managed and implemented through The State Islamic Religious

Councils (SIRCs) which makes its professional centralized management). The country is now accepting other avenues of modernization particularly in the operational corporate waqf frameworks and the advancement in innovation particularly in waqf record keeping and development. The innovations like cash waqf and waqf shares have also bridging gap of efficiency and income generation with transparency, that has makes Malaysia as leading country in the effective waqf administration. India for instance have a Waqf administration under the Waqf Act 1995 which however was advancement encounters hardships such as exploitation, infringement and obscurity. So also, decision-making in most of the Waqf Boards is ineffective due to lack of fund and poor management information system skills. India introduced the Waqf Asset Management System of India (WAMSI) for digitization where implementation is still poor. Though the case of Malaysia shows the profit and effectiveness of the appropriate use of waqf resources, the experience of this country requires centralized management, active participation of the private sector and applied use of modern technologies for the further development of the potential of this institution. The WAQF institution can be a case study, and India can learn from the above success stories by updating its WAQF legislation, increasing government and public accountability, and engaging the civil society to unleash the WAQF social-economic potential. All these gaps could be overlapped to attain a better result about the management of India's enormous Waqf endowment[10]

Conclusion

In Malaysia and in India for example, waqf property management has significant potentials in the direction of socioeconomic growth. Malaysia's success is also attributable to centralized governance, identification of corporate waqf models, and technology implantation but problems like corruption, encroachment, and ineffective administration are the harsh realities of India's waqf system. However, lawmakers in India as well as the judiciary know that the time has come to reform the boards in a bid to enhance the fortunes of the stakeholders to ensure accountability, transparency and efficient use of resources. While the case of Malaysia is informative for reasons concerning the process and achieved results regarding modernization and participation of bodies of stakeholders in creating new financing models for the Waqf, the

case of India is to look for potential in unused opportunities latent in its properties to foster poverty alleviation, education and other communal-related initiatives by emulating changes in fiscal systems. Finally, cooperation must be present to reintroduce systems of Waqf.

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Addressing Emerging Threats in the Digital Era: Cryptojacking and Ransomware

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Abstract

Mass progress owed itself to high speed in the development of digital technologies, while highly sophisticated cyber threats followed alongside. Among them are problems such as crypto-jacking and ransomware, both of which are significant problems and cause a huge risk, not only for individuals but also for governments, corporations, and so forth. Cryptojacking would then be defined as the unauthorized usurpation of a victim's computing assets to mine cryptocurrency-it consumes the system resources and later causes monetary as well as performance-based damage. Ransomware malware usually encrypts files owned by the victim and then demands money to unlock them from the secure location; the outcome is usually severe loss in terms of financial values as well as reputational loss. This paper discusses the trend, tactics, and result of cryptojacking as well as ransomware attacks in virtual worlds. This was produced taking the holistic view as to how these threats exploit weaknesses in the software, networks, and human behaviour by taking advantage of these increasingly sophisticated methods, such as phishing, malware, as well as zero-day attacks. This paper would discuss how, when, and why cryptojacking and ransomware attacks have developed and the strategy behind such attacks, as well as their impacts within the digital arena. A realistic appraisal of actual incidences should hopefully provide an analysis almost mercilessly critical about real cases and the consequences in terms of cost and damage to the sensitive structures in these cybercrimes. With regard to the surging threats that this paper is endeavouring to mitigate, international cooperation, a regulatory framework, and a public awareness campaign remain some of the more essential strategies to heighten the approach. This has outlined strategic recommendations about strengthening cybersecurity resilience in the cryptojacking constantly changing landscape.

Keywords- Ransomware, Cryptojacking, Cyber, Threat

Introduction

The paper talks about how in today's advance technology world, where the digital technologies are the best friend to every person, institution or organisation and works as a backbone to them but with a great help to everyone these digital systems remain a way of cyber threats which causes great harm to the people using it. Digital systems are vulnerable and can be used in a wrong way too.

Among all kinds of cyber threats in today's time the most alarming one **is Ransomware and Cryptojacking**, these two most planned yet dangerous cyber-attacks have very high impact in the modern times, Now taking about both were firstly, **Ransomware** becomes one of the most lethal weapons of criminals in today's time it is one of most aggressive problem, they 1st encrypt files or locking the systems, then to make it free they ask for Ransom amount of money which is called Ransomware. They mainly hold someone data for money.[1]

These kinds of accidents increase in recent years when modernization also peaked, they target every kind of place like MNCs, Corporation, Hospitals etc.

They Threaten to leak sensitive data to Public and ask Ransom money as a threat for that, These Kinds of threats are very alarming in nowadays, it has far-reaching consequence, it gives economic losses it destroys reputation and can give threat public safety. Example- Risking patients' lives in hospitals.[2]

Coming on another threat which is very much common in today's time, *"**Cryptojacking** is a type of cybercrime that involves the unauthorized use of people's devices (computers, smartphones, tablets, or even servers) by cybercriminals to mine for cryptocurrency. Like many forms of cybercrime, the motive is profit, but unlike other threats, it is designed to stay completely hidden from the victim."*[3]

Some symptoms of cryptojacking is Degraded System performance in which overheating occurs in the device, also includes Energy Consumption.

A bit more problematic by nature, cryptojacking can endanger both personal as well as commercial interests. The infected component or cloud instance often forms the reason for critical

shortfalls and financial losses, so advanced vigilance and a strong defence mechanism is in order.

1.1Main Objective of this paper

This paper will answer and address the increased threat in modern era which is caused by Cryptojacking and Ransomware. These crimes are really different in their nature but both causes the problems in digital systems.

1. This paper Investigate the Underlying Mechanisms of this threat, it examines how this problem is created and what are the tools and techniques used by the criminals.
2. Finding out how this impact the Economically, Operationally and what are the effects on the society.
3. Finding out the Existing Mitigating Methods and what are the possible defenses and it also tells what are the shortcomings strategy which is not used.
4. Highlighting Different Policies and Legal Framework in India and also International Policies which addresses this kind of threat.
5. Finding and Proposing different Future Ways which can be used including AI and Blockchains, International Collaborations and promoting Cybersecurity and awarness.

This Paper will contribute in Promoting the awareness against these threats and finding ways to solve it, by bridging the research gaps and proposing the solutions.

2.Emerging Cyber Threats Technique's

2.1Cryptojacking in Modern World and its Techniques

Understanding the Cryptojacking[4]

Cryptojacking it is very Sneaky form of cybercrime, it includes using of someone else computer to mining of crypto currency, it remains undetected for a longer time it is designed in such a way, they mine the cryptocurrencies like Bitcoin. Mining is a way and it is not easy to mine it needs good hijacking skills a lot of computing power also, so in order to do so it need high costing and to save the high costs, they use certain ways.

They use web attacking-

Suppose you are using web browser and a page show up and you click on that a page starts loading but actually there is hidden script planted by hijavker on that URL, as soon as that page will load the hidden script will be planted in your system and your device

starts slowing down and start heating up Degraded System performance in which overheating occurs in the device, also includes Energy Consumption, these kinds of attacks happens on cracked versions of Browser used by the user.

Using File based Attacking-

Attackers makes fake files which attract the population mainly which are usually corrupted files which hijack the system for example Fake gaming files for Youth Population, or some useful files. When you download those files, the hidden programme starts mining the data starting draining the system.

Using Cloud Cryptojacking

Cloud Cryptojacking, here the criminal focuses more on the business man or enterprise; Organizations employing cloud services such as (AWS) Web Services of Amazon or Cloud Google. They availed themselves of the scheduled cloud accounts and utilise their computing resource which costs them, heftily in terms of monetary loss of the victim.

2.2Ransomware in Modern World and its Techniques[5]

Ransomware is among the deadliest weapons of the crooks in today's time. It is a most aggressive problem which 1st encrypt the files or locks the systems, and then to make that free, they ask for some ransom amount of money which is called Ransomware. They mainly hold someone data for money.

Such accidents increased lately due to peak modernization that also targets every kind of place, be it MNCs, Corporation, Hospitals etc. They threat to leak sensitive information to Public and ask Ransom money as a threat for that, These Kinds of threats are very alarming in nowadays, it has far-reaching consequence, it gives economic losses it destroys reputation and can give threat public safety. Example- Risking patients' lives in hospitals.

How Criminals uses this Method to get Ransom are-

By Using method of encryption

Once they are inside your computer system they scan every small document, data, pictures, important files and then they encrypt it, meaning they lock it completely and it can be only unlocked by a secret code, so in order to get that code you have to pay them Ransom amount.

By Using method of infiltration

Firstly, they send you many emails which looks alike that its trusted from you trust and once you select on that link it will infilter your personal data to them and then they blackmail you with asking Ransom amount of money in return.

By Using method of Extortion[6]

When the user file is encrypted then the real attack of blackmailing starts, they ask for Ransom amount of money by sending Ransom note. That can be anywhere in your system saying that your files are locked meaning it is encrypted by them, and using that they extort your money often in form of untraceable way which is bitcoin or cryptocurrencies. If you will not pay them soon, they will threaten to delete the important files so by this way they extort money.

By Using method of double Extortion

Here they got your sensitive data along with the locked items and then they blackmail to make that sensitive data viral and they ask money for both of the causes, This is called double extortion.

These threats like ransomware and cryptojacking goes to shake the people's trust and the weakness in their computing systems. Ransomware is threat which can be seen easily and it is very harmful for the individuals and causes financial loses whereas Cryptojacking is kind of silent threat one cannot finds out easily but it runs in the background and it is very harmful for the person. If we understand how they plan and plot these kinds of attack one can understand it and also safeguard themselves.

3. Cryptojacking and Ransomware impacts on different part of Societies

3.1 How does it effects Economically [7]

Here the 1st is Financial losses where the victim losses much money as a Ransomware amount which is very hefty for getting their data back. Whereas Cryptojacking makes the computer work ugly and increases energy consumption and hardware corruption and degradation which makes the individual to replace the System.

Also, The Operational Downtime here the Different institutions rely on continuous work and due to these attacks, it makes the operation down of and gives significant losses to the institution

3.2 Its Impacts on Society: Cryptojacking shakes the safety system and degrade the trust in digital world because it targets Devices

which are personal also it effects and damages the reputation of the business whereas Ransomware also effects in many ways one is jeopardize pubic safety and attacking on critical infrastructures such as hospitals and water supply systems. This growth in threats increases the risk for high value targets and it increases cost of society.

3.3 Its Impact on Environment[8]

Cryptojacking has unseen reality of effecting the environment in a very significant way, because of its reliance on high energy uses, it requires immense energy of computational power to solve complex mathematical problems, and when millions of devices get exploited for mining then energy uses also increases rapidly.

Causes Energy Drain[9]

By using Cryptojacking and mining into other people system it starts draining the energy resources of the infected person and the computer or system runs at high energy because of that electricity consumption also increases rapidly causing to draining the energy and it put adverse effect on the environment as the Victims without knowing contributes to this drainage of energy and paying extra bills increasing carbon footprint.

Rapid Increases in E-Waste and Hardware Wear and Tear

Every individual who is victim of the systems overheating, slowing down because of Using Latticework mining equipment at full capacity for weeks incurs high wear and tear. Because the mining operation secretly in system and victims dont get to know about this early but eventually after failure of their device. This contributes a lot in this increase of E- Waste and Hardware wear and Tear.

Wider View where it impacts the Environment[10]

Crypto mining is already impacting the environment on big scale, taking large need of mining operations.it creates energy drainage among millions of infected victims worldwide.

In many Areas of world where energy is generated with Coal and non-renewable resources causes emission of rapid increase in Greenhouse gas emissions.

Whereas Ransomware does not affect environment directly but indirectly many organisations, factories which are trapped by Ransomware attack can generate waste or eat resources without any reason during its Degradation or downtime.

4.Legal Frameworks-

4.1 Laws Applicable in India

India being such a large country been fighting with this kind of threat since very long time, but still India is not fully ready to tackle this Problem as India only have *"The Information Technology Act, 2000" (Amended in 2008)*[11], but still there are many provisions which safeguard from these kinds of threats.

"The Information Technology Act, 2000 (Amended in 2008):

Section 43: This Section has provisions for crime where unauthorized access is taken of someone else computer and his or her data is being theft and also causing severe damage to their systems. It is highly used in cases of Ransomware and cryptojacking where this kind of crime is done.

Section 70: It generally protects the Information which is critical in nature of the [12]infrastructure. It also tells the need for making cybersecurity laws in field of healthcare, banking and industries, which are being targeted often.

Section 66: It focuses mainly on Computer related crimes, it penalizes the person who take advantage of someone else computing resources with ill intention, it includes all kind of hacking.

Section 66C and 66D: It focuses main on cheating by impersonation or identity theft, here the attackers generally use phishing as a technique to put ransomware.[13]

Also, in *"Indian Penal Code, 1860"*[14] *and "Bhartiya Nyaya Sanhita"*[15]*:*

Section 383 and Section 384 in IPC and currently in BNS (Bhartiya Nyaya Sanhita) it is changed with **Section 308 defines Extortion** as it is relevant in Ransomware Cases, as they demand money to return the encrypted money.

"Personal Data Protection Bill (Draft, 2019)"

This bill is still not enacted in the Indian Legal System; however, it is proposed to Government which imposes penalties for crime where personal data is being theft, targeting ransomware attacks indirectly.

4.2 Laws used in International Stage

"Budapest Convention on Cybercrime"[16]

First Time in International scenario this Treaty has been called which would aimed to address internet crimes like hacking and data breaching also it sets up a legal framework to bond all the nation's

laws and come up with on more international cooperation. It is not accepted by India and India Refused to Sign but it is a source for making more stricter and useful cybercrime laws in India.

"United States Cybersecurity Laws"

Hacking and Unauthorizes access like crimes has been dealt in US as they have many laws, some of such examples are the Computer Fraud and Abuse Act (CFAA)[17]. Ransomware has been dealt under anti-extortion statutes, showing a active measure against cybercrime by FBI.

"United Nations Efforts"

For combating cybercrime with the help of international cooperation via resolutions ,the United Nations has been supporting it. United Nations have putting efforts for many years to fight against these kinds of cyber threats.

"Council of Europe Ransomware Action Plan, 2021"

Action plan of council of Europe talks about how to tackle it well and provides the Action Plan. It Focuses on victim support and international co-ordination and make strategy to fight against Ransomware.

International and National Laws combining together fight against this types of threats and they give mitigating strategies and framework to fight against these threats.

5.Currently Existing Preventive Measures

Cryptojacking and Ransomware imposes a lot of threat to society and organisations its very important to adapt a way or approach to tackle that as a preventive measure, and detection mechanisms. Each plan has a vital role to play and it helps in mitigate the problems and reduce cyber threats.

5.1 Steps for Prevention

It focuses on reducing the cryptojacking and Ransomware attacks by focusing on these threats and minimizing the chances for attackers.

1. **Updating the System on Time:**
   - Patches has been released to address the vulnerable points from where attackers can attack. Also, It is a very effective way to update the system on time to make it free from all types of malware and vulnerable points.
   - Automatically timely updates should be there to ensure timely patching.

2.**Proper Training Sessions for Workers and Employee:**

- Everyone knows that Humans are vulnerable to these kinds of new problems and only by properly teaching them can solve these problems:
  - By proper Training They can find out the phishing emails which initiate these attacks.
  - They can find out the all ill and malicious links.
  - Training can create the safe browsing practices and style which will help in prevent these issues.

Such Training and Workshops create better understanding of how to use Internet and also help them to create awareness of cybercrimes and Cyber security.

3.**Segmentation of Network:**

- The One way is to divide networks into different isolated systems it restricts the movement which is lateral in nature, even if one network is attacked others get safe.
- By this way it Protects to stop spreading it to entire organisation, and it remains it on smaller scale.
- As attackers attack one segment not all because it is segmented and divided

5.2 How to detect the Mechanisms

Even if the security is high the attackers have many ways to slip in through. This way will help in finding Cryptojacking[18] and Ransomware before any harm is caused.

1.BY Using AI and Machine Learning (ML):

There are many Advanced tools which analyse all the unauthorized threats into the system. It flags all unexplored files in System or unusual data which are encrypted.

Also it finds out unknown threats making it a powerful tool against emerging cyber-attacks.

2.Systems Based on Signature:

This is a Traditional way yet effective way to detect it, it works on the basis of existing known databases to detect threat.

It is effective for well listed threats but still it is not that effective against the new threats which are polymorphic variants.

5.3 Protocols for quick responses

There should be proper quick responses for tackling the threat in cyber-attacks, fast and Quick reaction will decrease the impact of the attack.

1. **Highly active Response Team**

Every institution should have highly active Team which can handle the attacks in first hand being highly active.

They Should bifurcate the system which has been attacked with the system which is not affected, by finding out how that attack has been caused and how serious it can be and in end by solving it with total commitment.

2. **Backing up the data**[19]

The data should be backed up in the physical format or in separate system so it cant be affected by the criminals.

Data has to been protected by codes to unlock or encrypted. If an organization follow all this steps the data will be in safe hands and it will not go in wring hands.

6.Gaps found in this Research

After all the studies and laws made in this area of cybersecurity still there are gaps which needs to be identified to counter these threats fully:

6.1finding of Cryptojacking in system-

Cryptojacking is one of threat after Ransomware which easily can't be detected.

A. Targeting Cloud Environments:

Attackers attack the cloud storage of big industries for cryptojacking it, The cloud storage contains too many data which is very lucrative for getting targeted. Research should be done for detecting this threat so an algorithm has to be made for that, and it should be made on the basis of all advance tools including Machine learning or Artificial intelligence.

B. Tools for detection of minor inconvenience which cause Resource drain:

In case of cryptojacking, it did not easily came in radar, as its nature is to consume resource without getting noticed, so there should be tools which can catch even minor inconvenience caused which can result in heavy energy consumption later.

6.2 Ransomware impacts in psychological way:

Due to this kind of threat, it really gives a lot of stress to management in negotiations of Ransom amount as the demand of money is always high and how one has to negotiate it is also a mystery till now so there should be research regarding this.

6.3 Getting Ready or preparing for new Upcoming Threats:

As every day the Technology is taking a new shape, it is very important to prepare yourself for the new problems and plan the adaptation of protective measures.

7.Future Direction

7.1 Learning Machine and its Language and Artificial Intelligence

Using this tool will help a lot in Finding ways to cure Cyber threats, As AI has capability to solve these kinds of threats now talking about Machine Learning it has ability to find that where this threat has infected and to mitigate those risks using its algorithm.

7.2 Using Blockchain to Reduce Weakness against Cyber threats[20]

Blockchain secures data Transaction and it prevent it from getting affected by these threats of Ransomware or Cryptojacking, it reduces its weakness against Cyber Threats.

7.3 International Cooperations and Policy Making

It is a Global Threat and every part of the world suffers from the same problem. Therefore, by internationally making a policy and framework against such threats can save and protect us from such threats.

7.4 By educating people

It is the need of time that workshops should be held at every educational place or workplace to let them know about these kinds of threats and teach them that they can identify when they are being attacked by these threats.

Conclusion

Cyber Threats are very serious and dangerous in today's time, Ransomware and Cryptojacking is part of these Cyber threats and it is very danger in cyber world as it infects the Computing systems. In Ransomware, they threaten to leak sensitive data to Public and ask ransom money as a threat for that, These kinds of threats are very alarming in nowadays, it has far-reaching consequences. It gives economic losses and destroys reputation and can give threats to public safety and in Cryptojacking very silent form of cybercrime, it includes using someone else's computer to mining of cryptocurrency, it remains undetected for a longer time, designed in such a way that It has collateral damages.

Fighting these kinds of threats it is important to understand these threats first and then combating it but also bringing all the Research gaps together and with the help of emerging technologies and Tools Like AI and ML, with International Collaboration and making stricter policy Frameworks to safeguard Modern World. The Paper Aims to seek attention from Researchers, Law Makers and request for Action against These Threats.

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Critical analysis, Plea Bargain with respect to Indian Perspective

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Abstract:

The paper highlights the workings and limits of applying the Plea Bargain procedure in the current Indian Judicial system. It underscores the urgent need for public awareness about the Plea Bargain system and how certain factors, such as cultural bias [never trusting the words of a lawyer or Doctors], were due to the corruption in the essential working of the medical and legal areas of India it became a presumption in the general public that all medical and legal practitioner is corrupt, reliance on the traditional system [good always prevail over evil] put such presumption still doesn't shift or change the opinion of the vast population with regards to reliance on the judicial system to settle minor to minor dispute, and illiteracy rate regarding the availability of such tool in the judicial system [around 30% of Indian population according to NSO[1]] with reliance on the judicial system proper knowledge and understanding with regards to the tools available for said resolution became another factor due to certain presumptions or presumptuous biases about the applicability and impact of the tool in the judicial system and finally, the reliance on the traditional judicial system or lack of knowledge regarding the availability of such tools or stubbornness in avoiding change due to the unjustified presumption with regards to the system or the different method of application or the ethical or unethical working of the same. The paper also tries to highlight the shortcomings and limitations of the current system, the implications of the plea bargain system, the legal factors involved in the system that reduce the effectiveness of the applicability of the system, and finally tries to suggest specific changes or implementation in the system increase the efficacy of the applicability of the plea bargain in the current judicial system also suggesting methods or implication

could be to improve the awareness with regards to the availability of the system to the public at large.

Introduction

[2]This paper focuses on plea bargains used in many different jurisdictions worldwide, one prominent being the U.S. jurisdiction. Through this paper, the researcher wants to elaborate on this legal tool concerning the Indians Judiciary. The paper focuses on the evolution and development of plea bargaining in the Indian judicial system, focusing on factors that the researcher believes are the prominent reasons for the limited growth and application of plea bargaining as per their finding. The paper focuses on the implementation of this in the Indian judicial system and the evolution the same over years since Independence. The elevated population with a fast paced society and thus had a rise in the crime rate and possibility to evade/avoid conventional justice system. which led to the accumulation of cases in the judiciary to clear these backed up cases and speed up the judicial process the plea bargains apparatus was brought into existence. Plea bargaining is a negotiation instrumenting that can bypass the lengthy judicial process by offering the party to the cases by accepting their guilt for concession in the punishment. The seasoned offender can also use fuel to escape a heinous crime with minimal repercussions. However, it helped legal practitioners expedite the case proceeding by enticing the accused or pinning them against each other; it also gave the same benefit to the accused to use the information of lack of evidence against them to their advantage by purposely being cough when they have no proof and leverage the plea bargain system to get the minor punishment with regards to their actions, or where the legal practitioner who earn through their rate of conviction purposely reduce sentences of criminals just to get a conviction out of the case. The paper also focuses on the factors such as the presumptuous bias in the general population of the nation with regards to the legal profession as a whole due to corruption rate in the system, to lack of knowledge or awareness of the presence of said tools in the legal system by the public or the legal professionals and the ethical dilemma faced by the legal practitioner with regards to the use of said tool or reluctance faced by the public in using the said tool due to religious or social impact and aftermath of the working of the judicial system with regards to social acceptance or

social distancing faced by the victims or convicts spared or released from all charges by the judiciary, or the judicial system very well understanding of the impact of the use of said tool reluctant to implement to its utmost potential like in the U.S judicial system keeping in mind the religious, cultural and social status of the public at large and fearing the affects could be faced by the judiciary and the user or the victims of the usage of the said tool (Accused) or other factors such not having a proper system in place to govern and safeguard the working and implication of said tool unlike the U.S constitution the judiciary fear of abuse or misuse of the aid tool against the innocent defendant. The last emphasises that the occurrence of any other practices in India like the Banaras or Patna market justice system merely regards enumerated economic or utility aspects to determine just delivery. It curbs the development of the plea Bargain system in India due to the need for more motivation to change or make the tool redundant. The paper aims to shed light on these factors so you become more aware of the challenges you have to tackle and see the surface of the problem. It may be the next step of bringing the Indian judicial system into the category of the most influential and comprehensive legal system to make it efficient and put hopes for the future.

Structure and Types of Plea Bargaining in India

The concept we are concerned with in this paper is called plea bargaining. Agreeing to plead guilty in exchange for dropping charges belonging to a lesser charge is one of the mechanisms of law by which an accused does. Plea bargain being a not well utilized, or well known in India as Compare to U.S Jurisdiction. However, this idea is enshrined under specific provisions under the CrPC (Code of Criminal Procedure) amended in 2005[3]. After the Indian courts had to take care of such a large number of pending cases, which was followed by the number of cases that were mounting due to the influence of the judiciary, the Criminal Law (Amendment) Act, 2005, wherein Planning Bargaining was introduced as Sections 265A to 265L of CrPC[4], in India. The country had considered adopting plea bargaining as one of the means to improve the effective delivery of justice when it was recommended by the 142nd Report (1991)[5] and 154th Report (1996)[6] of the Law Commission of India—the dropping of specific charges. Though widespread in the US and other jurisdictions for a long time, plea bargaining is a recent

and limited concept in India. The idea is codified under specific provisions of CrPC, 1973 introduced by an amendment in 2005.

The Criminal Law (Amendment) Act, 2005 brought pleading bargaining into the CrPC by inserting Sections 265A to 265L in the CrPC in India. It emerged from the ricocheting number of critical cases dumping up in Indian courtrooms and the weight the judiciary was beginning to bear. The 142nd Report (1991) and the 154th Report (1996) of the Law Commission of India expressed a view that plea bargaining should be considered by the country as a means of improvement in the effective delivery of justice. In India, plea bargaining is classified into the following three categories: Fact Bargaining, charge bargaining, and sentence bargaining.

Charge Bargain, where the accused mitigates his behaviour with the prosecution and pleads guilty unexpectedly to a lesser charge, decreases the severity of the punishment.[7] An accused charged under Section 304 of IPC (Indian Penal Code) for culpable homicide amounting to murder may plead guilty to causing death by negligence under Section 304 IPC[8]. By contrast, in sentence bargaining, the accused pleads guilty to their crime in exchange for a more lenient sentencing. For instance, a person charged with theft in Section 379 IPC[9] may bargain for lesser punishment after a guilty confession **and Fact bargaining** although not practised in the Indian legal system, where the accused agrees to certain facts in concession for omitting other facts. For instance, an accused may accept that he possessed but not with intent to be distributed and thus receive lesser charges.

However, the courts in India only sometimes accept much of the plea bargaining practised by the legal profession in India as its benefits are greatly outweighed by the challenges and criticisms that courts usually face. The practice has resisted an entire cultural force against it because it makes the "speedier" end of justice an approach that may be deemed to compromise any reformative principles of Indian jurisprudence. Additionally, it raises fundamental human rights: to the poor part of a society who have to be pressed into pleading guilty to crimes that they might not have committed, leaving the entire process up in the air as to its fairness in the first instance. Victim participation, although part of the conditions of plea bargaining, is again a very hotly debated point, with critics

questioning both the inadequacy of victim participation and victim compensation.[10]

Plea bargaining in India comprises three types, Although only the first two are widely practised: All must accuse these of charge bargaining, sentence bargaining and fact bargaining. While plea bargaining has been intended to streamline the justice process and shoulder the backlog, plea bargaining in India is denounced. The reforming justice system advocates rehabilitation to the point that what is excellent and practical sometimes conflicts with plea bargaining. Additionally, people of unsound mind and elusive literacy, forced into arrangements that are too unfavourable, would be placing themselves in a situation of human rights violations. Exploitation such as is anathema to the fundamentals of natural justice and liberty. The process relies on the accusers or someone involved consenting to the process itself, and thus, they miss out on what might otherwise be equal footing but rarely even know. In light of these limitations, it finds itself in a controversial place in India's legal framework, where the division between achieving efficient case resolution and ensuring justice and fairness to all stakeholders is being decided on.

Factors

Procedural limitation and rigid application:

An amendment to the code of criminal procedure incorporated since 2005 in the system of Indian law has allowed for the system of plea bargaining. The fact that the Indian judiciary is one of the best in the world of the judiciary meant that the trial method was generally always preferred to any negotiations in view it is in anticipation of helping the courts clear their backlogs of cases. This general principle that guides the Indian Judiciary is fair justice and is being practised for the sake of rights. Here, we explain the procedural limitations associated with the rigid application of the plea bargain system in India and clearly show an aspect of an aspect of challenges.

For this reason, the judiciary has to assert itself, not remaining idle, but process it vocationally and intervene proactively to track the plea bargaining system to protect the rights of the accused and the sanctity of the legal process. Implementing the plea Bargain Tool by India's judicial system and parliamentary law confronts significant problems.[11] As the Supreme Court had no requirement for regulation

or legal backing in the system, it avoided any implementation by the Supreme Court as its implementation might spoil the purity of the justice system. Firstly, the fear of such abuse and possible misuse of this tool for the right to life, liberty and security of persons with whom it is to be declared innocent. Therefore, the system was somewhat enabled, but certain restrictions were placed on its applicability to cases and situations.

Certain factors could be the reasons for the limitation in applying plea bargains in the Indian legal concept. The court believed it to be against the implication and working of Article 21[12] of the Indian constitution, a fundamental right to life. If no norms of regulation and control exist, then the vagueness, negotiable, and arbitrary power of the plea bargaining process will breach the rights of an innocent man. The plea bargain is hardly an applied mechanism in India, except with specific offences and situations. The plea bargaining system in India needs to be improved in its applicability, hampering its efficiency and effectiveness. This does not suggest or recommend this system to any legal practitioner or the judiciary based on its meagre applicability and time-saving benefits and benefits.

Limited knowledge and literacy rate:

This factor with regards to plea bargain could be explained into two different aspects, the first being the knowledge and understanding of the judiciary and the legislative about making laws or provisions in the creation of an effective system for implementation of the legal tool of plea bargain requires a certain level of understanding of the concept and a comprehensive report on the working and status of the public or the state at large as to ensure a positive or neutral impact of the implication of the new tool at large, which fearing a negative impact the supreme court has been reluctant to let the use of plea bargain for a broader sense.

The other aspect of this is the present information regarding the existence of the tool to the general public and the legal practitioners at large, which results in many inconsistencies with the applicability and the general impression about the concept due to the limited applicability and the limited information being present with regards to its use and application which creates a wrong impression about the working of the legal tool. In contrast, in other prominent jurisdictions such as the U.S, where the tool is being utilized to its

full potential and has become one of the staple elements of its judicial system, which shows the potential plea bargaining hold as a legal tool, but due to it is not recognized or well known by the general public which makes it use limited and scarce in the Indian judicial system.

Cultural and Societal Views on Justice:

[13]India is a country which have one of the largest populations in the world with one of the most significant and most diverse pools of people who belong to different religions community caste, and economic and social backgrounds, these make India the place of opinion as each and every person due to their different lifestyle and upbringing have a different mindset and opinion with regards to different factors, this could act as a good thing with regards to different opinion means always having a fresh mind for solving any problem, but with regards to the judicial and legislative system it does prove as a challenge as the legislative have to make laws considering the as the majority of people in mind and with regards to their religion lifestyle and opinion so that it could keep true to the right of equality provided under Article 14[14], similarly with judiciary it is a challenge for it to implement the law with regards to the different situation so as not to violate any personal law or to ensure that law remains uniform and fair and transparent to each and every one. Nevertheless, there are specific biases about the status of the accused person in cases that are witnessed or in which allegations against the accused person have proven to be proven innocent. There was a demeanour in society that has a terrible view of people who are convicted of any wrongdoing; with regards to a plea bargain where one pleads guilty to crimes they might or they may not have committed in return for lesser or lenient sentencing, this has as a harmful impact as a society will always see the person as a That being said, it is against the social and moral upbringing of any person in India that if you are innocent, then you wouldn't opt for a plea deal.

Absence of Data and Evaluation Mechanisms:

Indian constitution being a borrowed constitution, all its provisions have been taken from various constitutions and combined into one with minor amendments and changes for them to work together in harmony; similarly, plea bargains are also being borrowed from other jurisdictions who have a better understanding

and implication system in place for the application and governing of the cases where said tool is being used, with regards to Indian legal system. From the Indian judicial system standpoint, the Indian judicial system has no competent matrix to review and govern the cases in which plea bargains can be used, which is marked with disapproval or an uneasy feeling for the judiciary in using the plea bargain system. On the other end, reason for the lack of data could be that there is less need for the implication of plea bargains due to specific state judiciaries already having something similar to the local judicial process, which renders the plea bargain useless in said state. An example is the Banaras market system.[16]

Comparative and Human Rights Perspectives:

[15]Legal Systems of the world have been highly affected by human rights. The simple rights like privacy, the right to know and the right to speak began with laws. Unique bodies were made to exist in the legal system to cope with society's problems. These are the instruments set up to bring justice quicker and get an extensive list of cases in courts. Within U.S. and Indian legal systems, their impact on human rights is very opposed.

The tool could allow the legal practitioner, who is within the jurisdiction of the U.S., to quickly dispose of the backlog of cases. However, this practice came on very hard against many ethical criticisms of the coercion nature of the practice and the moral ground of the legal practitioner using the said tool. On a judicial level, the tool is used to simplify matters and the old proverb, "justice delayed is justice denied "[17]. It speeds up the practitioner in disposing of cases the way he wants them disposed of and gets to the new ones faster on the personal level. However, the adverse is the conflict of checking out the more prolonged period but safe gateway, the usual trial process or the swift but risky trial against infringing upon the rights of the accused or the sufferers.

Plea bargains in the Indian judicial system are a procedure that is heavy in a stringent view and, in some cases, used in minor offences only after a prolonged process. Indian Judicial system is still working only upon the traditional trial system to clear its cases because it wants to upkeep principles of natural justice of equity, fairness and good catholic conscience, and it does not want to give up on the same principle with time-saving. Before me, critics said that plea bargain represents a threat that the status of respect and

status of justice is put at risk because the judicial system becomes a lenient approach towards justice, which, in the interim, can reduce the respect and status of society towards the judicial system. Although plea bargain is an effective tool that could help in reducing case backlogs and speed up the process, it does not in the Indian judicial system lessen the fear of being abused and violation of human rights as a whole e of the accused or the victims, which will be going against the reformative justice system of the Indian judiciary, "where even if a thousand convicts have to said free no innocent man should be punished for any crime they have not committed"[18].

Conclusion:

[19]This dissertation examines the history, structure, application, and challenges of the plea bargaining system under the Indian judicial framework. The practice of plea bargaining has remained confined mainly by procedural limitations and prevailing societal attitudes in the wake of its inalienable commitment to the realities of reformative justice in India. The judicial system of India views fair legal proceedings, equity and rehabilitation instead of the outcome in almost any transactional sense. On the other hand, all those align with and come out of the constitutional basis of human rights and dignity, which is part of the Indian constitution

Nevertheless, the factors that have sprung up against plea bargaining in Indian jurisprudence are the misuse, presence of these principles, social prejudice and stigma. However, besides all these, the other barriers hampering the practicability of plea bargaining, such as poor public awareness, cultural resistance and lack of provisions for sound evaluative measures hampered its practicality or broader applicability and effectiveness. This is a perfect opportunity to reduce India's huge backlogged case list, increase judicial efficiency, and win public faith in the legal machinery through plea bargaining. Structures that can be utilised to prevent data misuse and structures to shape the country's data structure to the reformative justice ethos of the country can establish such safeguards as tighter regulatory frameworks, increased public awareness and structures to prevent data misuse.. Also, time-bound access to justice could potentially be a weapon in the armour of plea bargaining while the integrity of the judicial process can bloom. Plea bargaining is the Indian judicial system's sole hope of synthesising

efficiency and justice. That is, being a protector of rights, the judicial arm must remain, at the same time, a regulator of procedures in the judiciary, which may cut off the excess of procedures.

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Need for Efficient Laws on Conjugal Rights of Prisoners

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Abstract

"A society's moral fabric is reflected not in its treatment of distinguished citizens but in how it regards criminals."- Fyodor Dostoevsky

The principle, related time and again in through the judgements of the Supreme Court, sets out although many factors may result in a person committing a crime, the prisoners have still to be treated as human with basic rights-inalienable rights of humanity and to empathetic understanding and right to some basic entitlements of humanity. This paper examines the need for robust, articulated provisions of law that protect and govern the conjugal rights of prisoners, an increasingly relevant aspect of human rights literature. It emphasizes the psychological, social, and rehabilitative benefits such rights may bring, as appreciated by many studies that testify to better mental health and reduced recidivism rates among those who are allowed conjugal visits. Through this paper comparative study of application of conjugal visits for different prisoner across various demographics will also be drawn and varied standards for the same be discussed. At the same breath, the paper advocates for the formulation of standard rights-based laws that take cognizance of the rehabilitative intent of conjugal rights alongside the security needs. This paper proclaims the importance of conjugal rights towards a more humane system of restorative justice anchored by the dignity and family connections of the incarcerated.

Keywords - Prisoners, Conjugal Rights, Rehabilitation, Human Right, Efficient Laws.

Introduction

Imprisonment intends to restrict an individual's liberty, not alienate their humanity or rights. The ***Universal Declaration of Human Rights***[1] in 1948 and the ***Nelson Mandela Rules***[2] posit that prisoners remain endowed with basic rights, such as the *right to life,*

to dignity, and to family life. These principles emphasize human identity is not negated by imprisonment, thus placing value on the preservation of certain rights even behind prison walls.

The Indian Constitution, through ***Article 21***[3], has guaranteed the 'right to life' and 'personal liberty' The apex court has elaborated that the right to maintain familial and intimate partnership during imprisonment is included. But the absence of a legal code on conjugal rights has only seen its interpretation as patchy and thus its enforcement as piecemeal. This is an area where codification would be most needly required to effect uniformity and clarity.

The conjugal rights are acknowledged as a crucial aspect of rehabilitation and human dignity across the globe. Many countries have incorporated these rights in their legal system to improve bonding at the family level, for good mental health, and encourage easy social reintegration. Although India's judiciary, in its pronouncements, has been progressive, it still requires to develop further to institutionalize these rights through effective legislation and meet the standard of infrastructure required for the same. Conjugal rights stands in compliance with constitutional provisions and rehabilitative intent of the modern correctional systems.

This paper explores the importance that conjugal rights hold for prisoners, their benefits, along with its legal and practical challenges and provides recommendations for the same. It refers to global practices by advocating legislative reforms, creating public awareness, and developing infrastructure for conjugal rights to be made an important aspect of a rehabilitative correctional framework.

The Recognition of Basic Human Rights for Incarcerated Individuals

Incarceration is meant to be a deprivation of liberty, not a diminution of humanity, an important distinction that is deep in the principles of international law. Both the ***Universal Declaration of Human Rights***[4] (1948) and the ***Nelson Mandela Rules***[5] establish that prisoners retain their fundamental rights to life, dignity, and family ties, even in prison. One should stress upon the fact that human identity and dignity exist everywhere, independent of imprisonment, which gives a basis for humane treatment in the world's systems of justice. Imprisonment serves to deny freedom as a result of legal sanctions but should never be used as a method of

dehumanization or the stripping away of fundamental rights of humanness.

The psychological and social implications of the denial of prisoners' rights, especially regarding family and conjugal rights, are enormous. According to a study by ***Mososi Anne Nyakara and Prof. Simiyu Wandibb***[6], lack of such rights leads to feeling of isolation, job stress, and social isolation. It has also been found that prisoners rarely have strong family bonds and, therefore, their emotional stress is greatly heightened during a time that they should be reformed and reintegrated into society. This research argues that it is not merely a humanitarian consideration to sustain family ties but an essential approach to rehabilitate the prisoners with sound mental health and gradually reintroduce them to the society as productive citizens.

In the Indian context, ***Article 21***[7] of the Constitution that entails the right to life and personal liberty has been liberally construed to encompass the human dignity of a person, still more so when imprisoned. Rarely has Indian jurisprudence acknowledged that prisoners deserve some form of family relationship; courts have however allowed prisoners to secure paroles and visitations. However, the absence of a clear legislative framework to explain conjugal rights causes inconsistent judicial results. The Courts of some jurisdictions have accepted certain conjugal rights while rejected such claims in others; it has been cited with the lack of a relevant statute.

It also creates legal inconsistency and degrades the principle that all prisoners should be treated equally as much as possible.

The only way to close this legislative gap is to precisely codify the conjugal and familial rights of the prisoners to ensure each jurisdiction has a standardized approach to the practice. Someone must then write clear laws that would ensure that judicial interpretations are harmonized to effectively conform to the international standards as provided by the ***Nelson Mandela Rules***[8]. This will ensure that prisoners have rights apart from recognizing their dignity and this will enhance their emotional and psychological wellbeing as well as the purpose of imprisonment and psychologically and psychologically in as much as enhancing the purpose of imprisonment. It would allow prisoners to have meaningful relationships, hence making it easier for the justice system to reintegrate them into society and reduce recidivism.

This will balance the punitive character of imprisonment with respect to prisoners' human rights as reflecting a mature**,** *humanitarian justice system.* To enforce the dignity and humanity of prisoners would thus vindicate the principle that justice has two aims- addressing the offense and preserving the potentiality for reform in an individual.

It thereby marks incarceration as a tool for the purposes of law enforcement in no way that ought to take away the humanness of the people on whom it is exercised.

Conjugal Rights of Prisoners and Their Current Standing in India

Conjugal rights refer to the entitlement of spouses to involve themselves in both physical affection and also the intimate part, forming an essential part of marital life. For prisoners, these rights take shape through conjugal visits, allowing inmates to connect with their spouses in controlled or private settings. Such visits do more than provide intimacy; they are emotional connection and standing reminder of the social ties that are critical to mental health of inmates. But what we are having a debate on is conjugal rights for prisoners, and whether prisoners still constitutionally have rights to human dignity, rehabilitation and punishment.

In India, the judiciary has acknowledged the importance of conjugal rights for prisoners as a part of their fundamental rights under ***Article 21 of the Constitution***[9], which guarantees the right to life and personal liberty. In the landmark case of ***Jasvir Singh vs. State of Punjab***[10] **(2014)**,

The Punjab and Haryana High Court accepted conjugal rights as one of the rights in rehabilitating the human dignity. The court was keen on pointing out that these rights are needed for the 'psychological wellbeing' of prisoners, and that being in prison does not mean a man or woman loses the right to personal relationships.

Similarly, in ***Meharaj vs. State***[11] **(2017)**, The Madras High Court pointed out the psychological and family value of marital rights. The court pointed out that such rights are necessary to keep inmate's psychological balance, foster family ties, as well as promote the objectives of reintegration and re-socialization. These judgments reveal the dynamics of a progressive approach to prisoners as humans with human needs and with human rights.

However, the above-mentioned judicial pronouncements have limited practical effect in the conjugal rights in India because there is no written law. Even the most cogent of the court judgments lack the force of law and, therefore, cannot be implemented uniformly in all states. Therefore, there are no guidelines on how conjugal visits are to be granted or issued, and this is a matter that remains discretionary and inapt for legal prescription both at the state and prison levels.

This lack of legislation is also supported by the social culture that is always against the enhancement of conjugal rights for prisoners. Imprisonment is looked at as a removal of rights such as the rights to vote, to touch one's spouse among other rights, and any other preventive measure is seen as mercy. Further, the practical problems that arise from trying to set up conjugal visits are that factors such as privacy, security, and infrastructure create further physical hurdles in establishing the practice in Indian prisons.

In order to penetrate these issues, it becomes paramount to will a clear legislation that will outline criteria for conjugal rights for prisoners. Such a framework should balance security concerns with the preservation of inmates' dignity and familial relationships. By aligning with international standards, such as the ***Nelson Mandela Rules***[12], which promote the rights of prisoners, India can enhance its efforts toward establishing the rehabilitative model of justice.

It is not kindness to allow conjugal rights only but it is equally important to realize the importance of these rights in mental health of prisoners and in society as a whole. Ensuring their access to conjugal visits supports the broader goals of reducing recidivism and fostering reintegration, affirming that incarceration should target reform rather than dehumanization. Codifying these rights would mark a significant step toward creating a more just and humane penal system in India.

Article 21[13] And The Recognition Of Conjugal Rights For Prisoners

Even in the prison, the needs and desire for intimacy and personal expression exist. People under custody, without negating public perception, do not lose human and citizen characteristics. ***Judge Posner aptly remarked, "We must not exaggerate the distance between 'us,' the lawful ones, the respectable ones, and the prison and jail population; for such exaggeration will make it***

too easy for us to deny that population the rudiments of humane consideration."[14] This reflects the import of rights for prisoners that should accompany their inherent dignity. This principle has been echoed by the Indian Supreme Court in many landmark judgments.

In ***D. Bhuvan Mohan Patnaik & Ors vs. State of Andhra Pradesh & Ors***[15], it was held that, although some rights such as the freedom of movement or choice of profession were indeed lost while in prison, they were not lost altogether as far as the fundamental rights concerned. Under ***Article 21***[16], prisoners retain guarantees of life and dignity, a mandate that underscores the need for humane treatment even within penal systems. The progressive jurisprudence on prisoners' rights reached a watershed in ***Sunil Batra v. Delhi Administration ("Sunil Batra I")***[17], where the Court held that rehumanizing strategies, such as family visits, meditation, art forms, and service-oriented activities, are necessary to maintain the dignity of imprisoned individuals. In this judgment, social justice for prisoners was not only confined to punitive mechanisms but also rehabilitative and reformative approaches. The approach was further advanced by the Supreme Court in ***Sunil Batra II*** [18] wherein it had to make radical changes, including segregation of under-trials and convicted persons, liberalized visitation rights for family and friends as well as an outright prohibition on dehumanizing practices like imprisonment in irons. The court had held that familial visits are an absolute essential solace against the isolation of imprisonment and that denying such interactions contravene ***Articles 19*** [19]and ***21***[20] of the Constitution.

However, the judiciary has not uniformly endorsed conjugal rights. In ***G. Bhargavi, Hyderabad v. Secretary, Home Department***[21], the Andhra Pradesh High Court dismissed a plea for conjugal visits, citing potential disturbances to the prison environment. The Court observed that limited provisions, such as furlough or leave, already allow prisoners to maintain family ties, albeit temporarily.

Similarly, in the case of ***R.D. Upadhyay v. State of Andhra Pradesh & Ors***[22]., the Supreme Court touched upon the rights of women prisoner's vis a vis their children asserting that the jail environment makes children's welfare performative. Expounding this interest on both sides-the prisoner and his family-the court

confidently established that Article 21 stands the test of time to appeal to dignity and reasonableness in the cause of imprisonment.

These cases together represent the judiciary's recognition of inmates' rights to family and personal ties as an integral part of their dignity. However, the lack of a codified framework for conjugal rights limits their application in practice. The guarantee of dignity and liberty under ***Article 21***[23] necessitates legislation to institutionalize conjugal rights so that prisons become not only sites of dehumanization but also places of reformation.

Advantages and Benefits of Granting These Right

Conjugal rights in prison have a wide range of benefits to the individual, family, prison system, and society. Perhaps one of the most significant advantages is boosting one's psychological and emotional life. Loneliness is one of the defining characteristics of imprisonment and aggravates mental health issues. Removing the right to have close relationships from the prisoners only increases this lack. ***It has been found that conjugal visits make inmates feel normal, reducing stress levels and hence improving the betterment of their mental health***[24]. Another important strength includes strengthening family ties. Intimate relationships help the inmates preserve their status as spouses and parents, thus stability from this end improves them positively. This connection brings about less emotional and monetary strain to loved ones, thereby allowing familial structures to stay in shape even with the separation issues that come with incarceration.

Conjugal rights play a critical role in diminishing recidivism. ***Evidence from jurisdictions with conjugal visitation programs shows that those prisoners who have more ties to the family reintegrate back into society successfully.***[25] Those connections offer the foundation for rehabilitation and considerably decrease the possibility of the prisoner reverting to crime. Secondly, conjugal rights also help in improvement of prison management. Such privileges strengthen positive behavior among prisoners so that they follow set prison rules and thereby improve security of the prisons.

In the larger perspective, decreased recidivism and maintained units of the family provide for major social and economic benefits. ***Stable family units have been proven to foster greater harmony in society, and recidivism decreases an economic burden off the criminal justice system.***[26] Together, these benefits highlight the

importance of institutionalizing conjugal rights as a progressive correctional policy step.

Recognition of These Rights Across Various Jurisdictions

Conjugal rights recognition and awareness in prisons is an essential element of human rights and the rehabilitation of prisoners. The programs boost human dignity, rehabilitation, and family cohesion.

All of these factors have a tendency to reduce recidivism and encourage positive mental health. Conjugal visitation programs have been adopted by many countries. This is of great worth to the prisoners and society as a whole in strengthening family bonds and ensuring the easy readmission of prisoners into society.

UNITED STATES

Conjugal visits are allowed in several states, including California and New York, but under very strict rules. ***Lowered inmate violence and stronger ties of the family support rehabilitation and minimize the chances of recidivism. There is emotional stability where inmates tend to manage stress and aggression through holding on to family ties***[27].

CANADA

In the Private Family Visits program, inmates spend considerable time with their families in designated areas in prison. ***The program lays emphasis on the fact that for inmates to be rehabilitated and reintroduced into society, family ties play an important role.***[28] With such bonds, the program enhances inmates' mental well-being, and the chances of their reoffending are decreased.

BRAZIL

Brazil allows intimate visits in line with its progressive approach towards the welfare of prisoners. ***These visits are considered important for improving mental health and behavior, reducing isolation, and supporting rehabilitation among inmates***[29]**.** The country focuses on humanizing the prison system by acknowledging the basic emotional and psychological needs of the prisoners.

SOUTH AFRICA

South Africa considers conjugal rights as an issue of prisoner’s rights and allows limited number of visits by spouse or any other intimate person. These are meant to ensure that the

(captive) prisoners get a form of mental health check-up, reform and resettlement into society with an aim of eradicating loneliness and effecting positive behavioral change within prison.[30]

SPAIN

Spain has conjugal and family visitations as part of the correctional framework toward providing emotional stability and social readjustment for inmates. ***This visit will uplift the inmate's mental health, alter behaviors, and remain bonded with their families-an element that is highly pivotal for rehabilitating an inmate.***[31]

GLOBAL PERSPECTIVE

These practices are significant to show global importance in correctional systems regarding family cohesion and human dignity. Conjugal visitation has been shown to improve mental health, reduce recidivism, and encourage rehabilitation and successful reentry of prisoners.

Efficacy of Our Legal System to Adapt Such Rights Urging Quick Implementation of Same As Is Extremely Beneficial

Efficacy of Indian Legal System to Absorb Conjugal Rights Indian legal system has depicted an advancement approach to the rights of prisoners by judicial pronouncements underlining dignity and reformation of the convict. ***Article 21***[32] of the Indian Constitution has been interpreted as protecting the right to life and personal liberty, inclusive of humane treatment of even prisoners. Such recognition is mainly theoretical in nature, **as the provisions lack codification. The lack of codified provisions when clubbed together with the practical problems-lack of social infrastructure, stigma of society at large, and inconsistent policies-does not allow for widespread application of such rights**. Reformation both at the legislative and the administrative level would constitute sufficient development. One of the evident challenges is the overcrowding and deficit infrastructure of Indian prisons. Absence of any special arrangement for family visiting also speaks for overall structural disregard for prisoners' full human needs. Social perceptions further contribute considerably to the failure of conjugal rights to gain acceptance. The punitive model of privileges rather than integral components of human dignity and rehabilitation. This social bias often influences the policy making and sometimes even becomes an extra obstacle to reform.

This problem is further aggravated by policy fragmentation because there would be no standard interpretation or application of conjugal rights throughout the country. Some progressive judgments recognize the significance of these rights, while a codified legal framework would prevent inconsistency in their delivery, thus opposing the constitutional principle of equality.

Recommendations

For any step forward first needs to be in direction of legislation. Only comprehensive laws can help with effective application of conjugal rights of prisoners which will provide a sound legal basis and prevent prisoners from unnecessary and arbitrary denial in application of these rights. There is also a need to develop infrastructure to at least meet the minimum standards required to granting these rights. For this the government requires to come up with adequate resources like exclusive spaces in prisons that would facilitate private family visits. Such infrastructure developments will help ensuring that conjugal rights might be practically exercised in real life. *Awareness-building campaigns with regards to this matter is the need of* in order to prevail over the harmful perceptions within society and from the general public, prison authorities, and even policymakers who bear the misconceptions of promoting rehabilitative and social benefits of conjugal rights. International practices can also be called upon to drive back the above perceptions and drive towards reforms. This conjugal rights framework in India would essentially require the support of expertise and stakeholders in that matter. The issue of ineffective and non-uniform application could be sorted out with the implementation of these recommendations. Hence, India's legislature will have a chance at keeping constitutional commitment on dignity, equality, and rehabilitation, conjugal rights for the prison population.

Conclusion

Arising from the adoption of conjugal rights in prison systems around the globe, there is a need to address the basic needs of prisoners as the patients as well as appropriately reintegrate the culprits back to society. Conjugal and family visits are not only enshrined in prisoner’s dignity and their psychological health but also improves family bond which is an important factor in reducing reformation and preventing prisoners from engaging in destructive behaviors when they return to society. Initiatives like granting them

conjugal rights may alleviate some of the isolating influences that incarceration holds, also allow them to create positive behavioral modifications and allow prisoners for successful socialization upon leaving prison. Not only will these rights benefit the prisoner individually but also will be beneficial to their families and the community at a large. Such rehabilitative policies are therefore able to humanize the prison system while serving other societal goals. Efficient and codified laws to recognize these rights will create a correctional framework that seeks to balance justice, rehabilitation, and societal harmony.

Conjugal rights should be conceded inside the prison premises purely on grounds of fairness and dignity, extending treatment with humanity, even among criminals who end up in prison, which, in turn will help to maintain rehabilitation to say it once more, as Martin Luther King Jr***, "Injustice anywhere is a threat to justice everywhere."***

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Challenges Faced by India in Implementing Online Dispute Resolution

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Abstract:

"Computers are going to take over certain legal tasks- the practice of law will focus more on advice" ~Ricardo Anzaldua, Executive Vice President and General Counsel, MetLife.

This paper delves into problems faced by India as a developing country in implementing the Online Dispute Resolution. ODR in India was widely implemented during the COVID-19 era and was also accepted majorly because of the situations in the pandemic. Carrying on and practicing this widely will assist not only with dealing in the other modes of dissolution system such as implementing this in negotiation, mediation, and arbitration. However, it is also instrumental in case flow considering the case backlogs India has and it further helps in enhancing the access as it does not demand for a physical presence of parties. But the country has a lot of drawbacks in applying the ODR due to its poor technology. Further the lack of infrastructure and inadequate digital literacy adds up. Equally there is a lot of resistance for support to let got of conventional legal procedure to embrace changes. The protection of consumer's data privacy and other issues of cyberspace also plays a role in the use of ODR in enhancing the development in countries like India. The e-lok Adalat or the virtual courts are some of the initiatives taken by the government but they would still have to put in a lot of efforts to make proper legal provisions for the this. But implementing ODR will increase the accessibility and make it cost effective. This will speed up the process and make the courts more efficient and make the courts more flexible. The ODR systems also need much less infrastructure than traditional legal systems. This paper will mention the advantages of the ODR and the

problems faced by the people in adopting it and focus on hybrid dispute resolution that would combine the ODR and the traditional methods, ensuring an inclusive and efficient legal system in India.

Keywords: Online Dispute Resolution (ODR), Developing Countries, Challenges, Digital Education

Introduction:

The founding father of ODR, Ethan Katsh defined ODR as *"online dispute resolution is dispute resolution that's supported, facilitated, helped by the used of technology."*[1] This can apply to any kind of disputes and not just the traditional court proceedings. The resolution systems institute defined the ODR as *"a broad set of technologies meant to either supplement or replace ways in which people have traditionally resolved their disputes. ODR shares and builds upon the foundational characteristics of alternative dispute resolution, or ADR, [emphasizing] easier and more efficient methods of addressing conflict."*[2]

It is not important to replace the entire system but the ODR can be used in ways that will help the current traditional systems to perform better and be a win-win situation for both. This is because ODR is still a sprouting concept that has the capability to evolve a lot in future which can lead to both positive and negative outcomes.[3]

The ODR can be implemented to a massive area under the legal field itself.[4] This may range from conduction the court proceedings through virtual mode or by holding the mediation, arbitration, and conciliation meetings online. Even the special courts such as the consumer redressal commission, company law tribunals can conduct their proceedings via virtual meetings.

Though India has adopted ODR, being a developing country it is difficult for India to adopt to it and establish it completely. This is because the technological advancements in developing countries face a lot of problems making the process slow. This is mainly due to structural and policy- related issues. Because of this the economy also lags as compared to the developed country making it difficult to bring in the new technologies.[5]

The developing countries lack digital literacy because discrepancy between the socio-economic contexts of these nations and the demands imposed by the digital technologies. Most of these technologies are built in ways that is appropriate for the developed countries and their functioning leaving behind the under developed

countries which lack the necessary skills or the means to use that technology effectively.[6]

Advantages and disadvantages of Online Dispute Resolution

The online dispute resolution is a emerging topic making it having equal amount of advantages and disadvantages. The ODR possesses many advantages but mainly it's:

Cost Savings- ODR has been proved to be much cheaper than the traditional methods of dispute resolutions mostly because of extremely low-value claims or parties spread over geographical distances. This is also because setting up of ODR takes way less infrastructure as compare to the traditional courts or other means of dispute resolution. In situations like the ADR, hiring an attorney is usually unnecessary and ODR can help in reducing this cost. Some more costs like travelling expenses and accommodation can be saved.[7]

Convenience- ODR provides the parties with the advantage of participating from their homes or workspaces. It eradicates the need for travel and lets the parties match their schedules which helps them to engage at their convenience. In the ODR the documents are also shared electronically, making the process much easier.[8]

Accessibility- The flexible and affordable nature of ODR has made it more accessible. The developers are trained on the accessibility standards to ensure the continuous compliance with the needs of the users. The navigation is simplified with understandable layouts to accommodate users by making it user friendly.[9]

But at the same time the ODR carries many disadvantages with it. Especially in the developing countries more of these disadvantages can be seen.

Technological barriers- The parties must have access to sufficient technology and a reliable internet connection. Those who lack the proper tools or who are unfamiliar with digital platforms will be at extreme disadvantage. It is generally regarded as non-personal compared to the traditional ways of dispute resolution since parties do not meet in person.[10]

Lack of personal interaction- ODR does not offer the privilege for the parties to interact in person. This makes the conversation less personal as compared to traditional ways to resolve the disputes leading to a relatively lower impact on the parties.[11] Talking in

person is always believed to be more trustworthy and effective and it helps to gain more amount of trust and understanding the parties.

Evolution of Online Dispute Resolution

The origin of ODR started with the evolution of digital interactions, where the main development happened with the increasing commercial transactions. With a growth in virtual interactions, the need for an online based solution for these problems increased.[12] The ODR has been adopted in different areas like business, family law and intercultural disputes. This is because of the incorporation of technology, making a way to shift from traditional way to a more sophisticated way for dispute resolution.[13]

AI is also a very important aspect in the field of ODR. The cross-border issues in digital contracts with the efficiency and speed of AI in transforming online dispute resolution. Using AI would enhance the dispute resolution while minimizing human contact. Thought it might not replace human expertise but would improve efficiency and provide a cheaper and quicker justice.[14] The ai will not take over or replace humans because the intelligence of human especially in the field of law is something that matters a lot. The judgement require ethical considerations, empathy and emotional intelligence which can be provided only by humans but AI will carry forward the same process in every judgement.

Online Dispute Resolution in developed countries:

The technological development gave rise to the online dispute resolution system. The countries like America and China with the help of these technological advancement have adopted online dispute resolution. Both the countries are superior in the respective areas, where America is superior in respect to technological advancement and China improved in trade.[15]

The US has successfully established the ODR through many innovative practices and institutional efforts. Online platforms like eBay and amazon have successfully implemented ODR solutions which have been proved to be an efficient way to resolve conflicts. The courts in US also started adopting this system for handling the small claim cases. The American Bar Association also took efforts towards the implementation of ODR and ensure fairness and transparency. This advancement has placed the US on front end in using technological means to have more accessible and equitable mechanism of dispute resolution.[16]

China has innovatively utilized ODR in its e-commerce market place, which is the largest online second-hand trading market in China. Their unique model implemented is known as the "Xianyu Small Court", taken from the eBay's methods. The dispute resolutions between buyers and sellers is by a jury consisting of users in the platform, emphasizing community based problem solving.[17] This shows the that Chins is committed towards incorporating technology and community oriented mechanisms in ODR.

The Abu Dhabi Global Market Arbitration Centre announced the launching of its ODR platform in the first quarter of 2024 which is a complete digital system providing process for the resolution of disputes which will also help the parties to go through self-guided negotiations and mediation if necessary. They have introduced platforms where the parties can answer some pre-drafted questions which will help them create a settlement problem and automatically forward to opposite parties. This platform aims at settlement which parties can draft their own with the help of legal professionals and aim for mediations if the dispute is not settled.[18] This initiative is a whole new concept and a better way of improving the ODR. This will make the consumers interested in a whole new way of dispute resolution that is handy and cheaper than the traditional way to resolve disputes.

Online Dispute Resolution in developing countries:

Indonesia's growing e-commerce market, has led its way to development of ODR in the context of consumer dispute. It largely comprises e-commerce players such as Shopee, Tokopedia and Bukalapak. These platforms have managed to thrive despite facing issues including fraud and inconsistent standards of the dispute resolution which led to lack of trust by the consumer in dispute resolution. The ODR model in Indonesia has incorporated AI for law risk disputes which makes it way cheaper than another dispute resolution.[19] The introduction to AI though has not been very successful, it is an upright initiative for a developing country like Indonesia for introducing ODR.

The cost of implementing the ODR is the major problem in developing it. Despite the fact that the setting up of advanced technology and infrastructure is not very possible for developing countries and also due to lack of digital literacy of people in using

computers and technological devices. The desirability of using ODR to achieve potential benefits is emphasized, but there are a lot of issues faced like the slow internet connection, the lack of technology and the population that barely has any understanding of computers and they prefer live interactions over the virtual ones. The developing countries therefore, consider the ODR has an extension for the alternate dispute resolution.[20]

In countries like Africa and Kenya which are still developing, the traditional ways to resolve disputes is considered the most inexpensive, versatile, and grounded on the community approach towards conflicts. The traditional ways to resolve the conflict however are intended to mitigate the full legal system many African states as well as other developing countries inherit from colonial rule which also helps to ease the litigation burden.[21]

Moreover, if ODR were adopted it would even minimize the time taken for the procedure of suit or any other way of settlement if the disputes. The ODR also reduce cost and improve the convenience by reducing the long court procedures. Wear structure, novices and unreliable networks are some of the factors which breed an IT divide, a barrier that denies paperless trade to developing countries.[22]

Online Dispute Resolution in India:

Due to the outgoing of COVID 19 pandemic and challenges which traditional courts through in pragmatic solutions during lock down the necessity of ODR in India has been bough to light. This is because the ODR is efficient, affordable, and easily accessible with the help of government programs like the national mediation plan which also became popular. Justice mainly for the victims especially in the rural areas have been made possible by ODR and which also boosted by the pandemic.[23]

The ODR facilitated by the technology is a process that solves problems in Indian judiciary system which were mostly raised during COVID era. While there has been some progress with concepts like virtual courts, e-lok Adalat and RBI backing, there are questions outstanding in relation to lack of digital literacy tech adoption, awareness, and trust among users. Accessing ODR with increased effectiveness and ensuring receiving a justice there should be integration of the public and private partnership.[24]

India is coming out of the woods of being a mere follower in setting up the ODR. Being in its initial stage in India, the government through NITI Aayog formed the committee to liberalize ODR and enhance access to justice through online mechanisms. The Mediation Bill of 2021[25] which is being reviewed by a parliamentary standing committee aims at establishing online mediation and create a solid basis for ODR's board implementation in India.[26] The supreme court acknowledged the use of video conferencing to record witness testimony in the case of **State of Maharashtra v. Dr. Praful B Desai**[27] also making the submissions and proceedings online. Scanned copies can be exchanged by mail under section 31 of the Arbitration Act[28], and then the original copy can be sent with the help of post.[29] This is the initial step towards digitizing India as success in these small procedures will gain the trust of the people and help the people to trust the ODR too.

Digital literacy in India:

Digital Literacy is ability to efficiently find, evaluate, produce, and share information using digital tools and technology. Although it includes problem solving, ethical technology use and critical thinking about the content of digital materials, it encompasses much more than computer abilities.[30] The digital literacy plays a very important role in improving the ODR and this is because when the people are confident about a technology and its usage only then they will be ready to adopt it. This would come only from making them learn about it and improve the overall digital literacy of a nation.

In India, only 38% of the households are digitally literate and the digital literacy in cities goes higher up to 61% as compared to rural which is 25%. The digital literacy rate is higher in those cities as compared to the agriculturists.[31]

The National Digital Literacy Mission led by the Digital Empowerment Foundation aims to digitally literate at least one person in a family in India. This is in step with the Digital India Initiatives, which trains at a basic level to bring about digital inclusion, between rural living conditions and better governance.[32] India can also improve the digital skills in India by emphasizing on inclusion, better infrastructure and working businesses. Better digital skills enhance economic growth, providing access to vital services and promote new ideas and businesses. Everyone involved will be included in closing this gap for successful digital access.[33]

Conclusion:

India being a developing country faces a lot of problem in implementing the ODR. Its struggle to adopt the ODR is majorly because of the problems like the unavailability of integrated legal framework and lack of digital literacy, infrastructural issues and apprehensions related to data security and privacy. India can completely adopt ODR only when they have a full-fledged infrastructure to maintain and run this kind of dispute resolution method.

For getting the correct ways to implement the ODR, one must look at the digital systems and development of security systems. India currently does not fit itself in a position to pay for the sophisticated technology and it is time consuming for India to be developed to the required extent. There is a need for adequate legal environment in the country that would regulate this further and then the introduction of ODR will make it easier for the people to gain trust in it. The people in India have always has a lot of trust and confidence in the traditional court procedures but when it comes to ODR, it can be relied upon only when outcome is being doubted and regulated. This can take place only by formulating a legal framework.

Moreover, there cannot be a swift transit from traditional way to ODR, there has to be a gradual shift. New ways cab be introduced. Going with the flow of current laws and how the legal system is operating and trying to push for alternate dispute resolution virtually will help people adopt and trust it. This will be continent for the parties as they do not have to keep travelling to the mediation cells and keeping the time flexibility in mind as it would not hamper party's day to day activities.

Another way can be developing a hybrid way of dispute resolution. This will help in slow adoption of the ODR and also give time to develop the necessary legislations and technology with it. This would also provide the people time to get used to ODR mean while attention can be given to improving the digital literacy of the country. So, a virtual way can be adopted wherever necessary and possible. Considering the current state of India adopting a hybrid way of dispute resolution is imperative.

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Divorce Laws and Its Implications on Society and Gender Roles: India

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Abstract:-

Divorce is a very sensitive subject, especially in society-developing countries. The existence of a huge gap between men and women, in society becomes prominent. Essentially, divorce and alimony give rise to numerous questions during the evaluation of modern forward thinking and the struggle for equality among the genders, in all field. These influence the social relations of how individuals interact with one another, from individual well-being to family formation and more societal expectations. Research has shown that the ease at which divorce can be granted improves the general well-being of the household members, even though the marriage is not actually dissolved. The existence of social evil ultimately tips the scales in situation to protect the wife, the deserted spouse and law provides safeguard to them in various terms, however there is a need to understand the fundamental concept of marital separation and the scope of laws that are supposed and needed to govern it. Currently existing laws present in the CRPC and HMA do not encapsulate the rate at which the society is evolving. Indian society is very closely guarded by different personal laws, however, over the last decade or so, questions have been asked, about the existing gender bias in such cases pertaining to divorce, alimony and gender roles that suggest a paradigm shifting charge towards a scandinavian society and country. This paper, therefore, explores the legal composition of divorce laws and their spillover effects in how they shape societal structures and gender roles. Searching through policies adopted by different nations about divorce, this paper looks into how these divorce laws focus on equity, individualistic trends, and familial expectations.

Keywords- *Criminal procedure code, Hindu marriage act, Divorce Laws in India, Gender Equality in Divorce ,Socio-Legal Implications, Irretrievable Breakdown of Marriage, Stigma of Divorce, Patriarchal Influence on Family Law*

Divorce laws have a deep impact on the society and gender roles in it because not only do they form the legal landscape but also the social fabric where individuals move. The rising tides of divorce and social acceptability call for this knowledge of history regarding how divorce laws have impacted the dynamics of gender. Historically, the divorce laws have reflected how society views marriage and gender roles, and often reinforce such norms with women as subordinate. Women in most history were viewed as property in marriage, thus divorce laws reflected the same inequality. The English Matrimonial Causes Act of 1857 shows examples as if divorce ground requirements were relatively softer for males. Meanwhile, stricter grounds are often needed on proving a wife's misconduct before any divorces were approved. That is to say, much differentiation was evident to reflect an interpretation that females are less self-sufficient and rely too much on husbands, resulting in an uninterrupted cycle of gender discrimination.

Changes in divorce laws towards more equal divisions began in the 20th century and have their roots in the larger social movements advocating women's rights and gender equality. One of the most significant landmark changes in divorce law came when individuals could end their marriages without blame, no-fault divorce laws. This not only made leaving unhappy marriages easier but it also reflected a change in the attitude of society concerning personal fulfillment and individual rights. Given that women were becoming more educated as well as more employable, financial independence was an emerging force challenging the traditional role and marital relationship. Under these conditions, divorce has emerged as a possibility that enables a woman to be free from oppressive and unsatisfying relationships.

Lets focus on the evolvement of divorce laws in India and how it has reached its current status-

Historical Development of Divorce Laws in India

Indian laws regarding divorce have undergone complete changes over the centuries. With religious traditions, colonialism, and modern legislative reforms in the process, they came to evolve from traditional framework-based religious practices. Indian society is comprised of diversities that evolved through communities. Divorce laws vary in their acceptance within religious communities.

Eventually, one unified legal framework emerged over time to serve this diversified changing society.

Marriage in ancient India was essentially regulated by Hindu scriptures and customs. Marriage in Hinduism is not a contract but a sacrament (sanskara). The bond is therefore considered indissoluble. Divorce does not exist in the Dharmashastras; separation is almost unheard of except in cases of abandonment or adultery. On the other hand, Islamic tradition, also having its roots in India since many centuries, considered the marital bond as a type of civil contract. Laws and procedures for divorce also evolved under Islamic law-procedures like *talaq, khula, mubarat*, etc. Again these were not very stringent though often biased in favour of men.

British colonial rule codified the personal laws of various communities but based it on religious traditions. Hindu marriage remained indissoluble, while Muslim practice continued to follow its own customary ways. The British, however, established some laws to deal with the matters of cruelty, adultery, and desertion. The Indian Divorce Act of 1869 was one such step for Christians in India, which provided for divorce between the parties on grounds such as adultery, bigamy, or desertion. But even this was a restricted piece of legislation since it embodied Victorian morality, and the onus of proof was higher for women than for men. With the advent of Indian independence in 1947, there was a collective move to modernize and secularize the legal system but with respect for the religious communities' diversity. The landmark reform was the Hindu Marriage Act of 1955 that introduced divorce provisions for Hindus, Buddhists, Jains, and Sikhs. This law recognized grounds like cruelty, desertion, adultery, and mutual consent which challenged the traditional view of marriage as indissoluble. In Muslims, though the laws of divorce were still to be governed by the tenets of Islam, judicial pronouncements began to dominate practices. The Shah Bano case of 1985 is an example in this context and drew attention to questions related to maintenance for divorced women under Muslim law. In this context, the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986 took place.

In recent decades, Indian courts and legislatures have approached the making of divorce laws as more egalitarian than earlier. For example, divorce through mutual consent has rendered

the process for couples straightforward. The judiciary has enlarged the definition of cruelty into mental abuse and harassment over the years in keeping up with changing social norms. The Triple talaq practice has been struck off by the Supreme Court way back in 2017 and while pointing towards a blatant violation towards women in the Islamic personal law. Following on from there, the Indian Government brought the Act called the Muslim Women (Protection of Rights on Marriage) Act, 2019 to criminalize Triple Talaq. Indian divorce laws are the complex interaction of religion, law, and societal change. In earlier times, there was much stress on the sanctity of marriage, but the modern laws try to bring in a balance between the rights of the individual and social values. The journey of reform continues, fueled by commitment to equality, justice, and human dignity.

Current laws pertaining to divorce in India and its effect on society

India's divorce law seeks to balance religious sovereignty with universal principles of justice and equality. Even though divorce laws open avenues for people in dysfunctional relationships, societal acceptability and enforcement are vital in making these laws operative. The changing legal situation reflects the growing awareness on individual rights and social change with an open door to society's progress.

Existing Laws for Divorce- Indian laws regarding divorce are enacted as personal laws for communities and have specific provisions that also fall under secular laws.

- Hindu Marriage Act, 1955 (HMA): This act applies to Hindus, Buddhists, Jains, and Sikhs. Divorce is possible on the following grounds: cruelty, adultery, desertion, conversion, unsoundness of mind, communicable diseases, and[1] renunciation of the world .It has brought mutual consent divorce, through which husband and wife can jointly end the marriage after they live separately for a period of time.

[1] *R. Davies, The Impact of Globalization on Family Law: Cross-Border Divorces, 27 Int'l Fam. L.J. 56 (2020).*

- Muslim Personal Law (Shariat) Application Act, 1937: The Islamic tenets talaq, khula, and mubarat are recognized. Triple talaq or instant talaq was made a crime through the Muslim Women (Protection of Rights on Marriage) Act, 2019. The bill is passed for equality among sexes
- Indian Divorce Act, 1869: This act regulates Christians. The grounds for divorce are adultery, conversion, cruelty, and desertion and recent amendments have made it gender-neutral and accessible.
- Parsi Marriage and Divorce Act, 1936: The act governs Parsis and it gives grounds similar to HMA, such as adultery, cruelty, and desertion.
- Special Marriage Act, 1954 (SMA): A secular law applicable for interfaith and civil marriages and it encapsulates grounds for divorce on the same lines as in HMA. Thus, it is an important law for those who are marrying from a different religion.

Other Related Laws:

- Domestic Violence Act, 2005 (PWDVA): Through this, women can also seek protection orders and stay rights.
- Section 125 CrPC: This is with regard to the maintenance of spouses and children irrespective of religion.

Mutual consent divorce and provisions under the CrPC and PWDVA have empowered women to come out of abusive marriages and claim financial support. Instant triple talaq being criminalized is a social shift towards gender equality. The increasing acceptance of divorce is a step out of the traditional stigmas of the end of marriage, but in conservative regions this remains socially challenging for women with potential ostracism, or even economic insecurity. Generally, divorce throws out of kilter the family structure, primarily for children. Custody battles are often causing lasting psychosocial damage to children. The trend nowadays is shared custody and mediation, respectively, to mitigate these adverse effects. Women, especially from the economically weaker section, are also likely to face economic instability following divorce. The judicial soundness of the maintenance provisions is being contested, and mechanisms for effective enforcement are required. Societal unwillingness to accept divorced people alienates them, especially in rural areas.

Economic, Social and Legal implications of Divorce in India

Divorce is a complex phenomenon with far-reaching consequences in a country like India, where marriage is not merely a personal bond but a social and cultural institution. Its implications are economic, social, and legal dimensions, each carrying unique challenges and opportunities for individuals and society at large.

Divorce usually leaves an individual, especially a woman, financially drained since she is not independent. In a patriarchal society like India, many women are economically dependent on their husbands. Problems like maintenance, alimony, and child support arise after divorce. Even though laws like Section 125 of the Criminal Procedure Code and the Hindu Marriage Act exist, their implementation is erratic, making women vulnerable to poverty. In divorce, men have to incur great monetary costs in fighting over disputed alimony and child custody cases. The court battle costs add to the expenses of each party. For children born to divorcing parents, economic instability may also be expected, especially when parents are single-income earners..

The social implications of divorce in India are huge because marriage is an institution of extreme sociological importance. While society has evolved, divorce still carries the stigma; true, especially among the more conservative communities, it remains a taboo. It is women, who are discriminated the most socially or judged, alienated, and even excluded economically by their family or society. Such stigma may prevent a person from seeking divorce in abusive or unsustainable marriages, furthering cycles of unhappiness and dysfunction. Children of divorced parents face social challenges, such as adapting to new family dynamics, being bullied, or feeling ostracized among peers. However, with changing societal norms and increased awareness, these stigmas are gradually fading away, especially in urban areas where divorce is becoming more acceptable. Conversely, divorce also manifests as a new shift into individual autonomy and putting better mental health and personal fulfillment above societal expectations. Such a phenomenon represents a universal cultural shift toward modernism and equality.

Possible reforms in divorce laws

India's well-developed divorce laws, though existing, still have quite a long way to go in making it fair and efficient. The pluralistic legal framework, though revering the religion, makes

inconsistencies and barriers for many individuals affecting their rights and dignity.[8] Therefore, that change can only be obtained by giving the system a total overhauling, bringing it into conformity with new social realities and the principles of justice and gender equality.

1) **Irretrievable Breakdown of Marriage as a Ground for Divorce-**Formal recognition of irretrievable breakdown of marriage as a ground for divorce per se would be the biggest reform. At present, people have to establish such grounds like cruelty, desertion, or adultery, which may sometimes be intrusive and adversarial. Irretrievable breakdown would allow couples to terminate marriages that have reached the breaking point without causing blame or unnecessary legal problems. The Law Commission of India has long recommended this but still awaits legislative action.
2) **Uniformity Through a Uniform Civil Code (UCC)-**One of the widely debated issues in Indian jurisprudence is the Uniform Civil Code (UCC) that should bring equal divorce laws applicable to all communities. Even though religious personal laws result in diversification, gender inequality is perpetuated at certain times: discriminatory practices under Muslim or Parsi divorce laws. In the case of a UCC, all citizens will have one law, neutral in gender and secular, which means equality and legal clarity.
3) **Simplification of Legal Procedures-** Divorce cases in India are time-consuming, expensive, and psychologically taxing due to the inefficiency of procedures.[9] It requires reforms in court procedures that would streamline them, including: Setting up family mediation centers to resolve disputes before reaching the courts, Increasing online facilities for filing divorce cases to minimize delay, Fast-track family courts should be introduced to provide speedy redressal, especially in cases related to domestic violence or children's custody.
4) **Gender- Neutral Provisions-** While divorce laws are becoming more egalitarian, some biases still exist. For example, maintenance orders tend to be biased in favor of women, possibly missing cases where men or other genders may require monetary support. Making maintenance and alimony laws gender neutral would fill this gap. Likewise, greater clarity on

the child custody law, as with shared parenting models, can enhance fairness and reduce litigations.

5) It becomes important to restructure divorce laws in India so that the legal system becomes more balanced, humane, and responsive. Strengthening support systems, exercising a Uniform Civil Code, processes, and finally, recognition of irretrievable breakdown would be steps forward. Such reforms would not only preserve dignity in individual matters but also reflect respect for the nation towards justice and progress.

Social taboo over Indian divorce cases

Divorce in India continues to be a controversial and shamed subject, very much deeply imbedded in the social fabric of the nation. Even with legal developments and social ethos, divorce is looked upon as a failure on people's part rather than as a termination of an unsustainable relationship. The social stigma attached to divorce impacts the lives of the people, particularly women, on how they can pursue justice, re-constitute their life, and re-enter into the social fold. Marriage is something considered to be sacred and a lifetime commitment in India. This often compares with social and religious obligations. Dissolving marriage has been frowned upon because of traditional values. The victims are then ostracized by society. Women, within the patriarchal structures, have to tolerate marital hardships and abuse in the name of preserving family honor. Men also are victims of stigma, but slightly less, as divorce is associated with impotence or inadequacy to provide. Women are also stigmatized further, due to their dependence on their husbands for financial matters. Divorcees become an economic liability to the family of origin, reducing both their economic and social benefits. Stigma from the public and social circles due to divorce is added to psychological damage of marital break-down. Divorced people are often judged, ostracized, and deprived of emotional support from family and community, which leads to feelings of guilt, shame, and isolation. Women are more victimized by the stigma, as they are labeled as failures or subjected to character assassination. Children from divorced families may be bullied, have reduced social standing, and experience psychological distress due to the societal judgment faced by their parents.

The societal taboo of Indian divorce is rooted in the longstanding cultural and patriarchal norms that stigmatize the

break-up of marriage. Changing this requires not only a legal reform but also widespread campaigns to challenge stereotypes and bring on board acceptance, ensuring the freedom of individuals to put in their best efforts toward welfare without fear of social persecution.

International laws pertaining to divorce

International divorce laws have always portrayed the cultural, legal, and social norms of diverse nations. There are lots of differences among them and are pretty complex. Because of globalization and more cross-border marriages, understanding international divorce laws is very crucial since they have direct impacts not only on individuals but also on structures of society.

- In most countries, divorce laws are heavily influenced by religious activities. For instance, Sharia-based laws in Islamic countries regulate divorce procedures like talaq and khula, which are often biased towards men- Conversely, those countries with strong Christian influences, such as the Philippines, do not permit divorce but only through annulment, which aligns with their religious understanding of marriage as a holy institution
- Countries like the United States, Canada , and most of Europe have adopted no-fault divorce, where couples can end marriages without proving fault. This makes procedures less contentious and less acrimonious.
- Countries like India and Japan still require grounds such as cruelty, adultery, or desertion, which may lead to a very contentious legal battle.
- Countries such as Sweden and Norway are on the forefront, making divorce gender-neutral: equally distributing marital assets, joint custody, and such.
- Countries with patriarchal systems, like Saudi Arabia and certain African states, might limit women's rights to divorce and properties, thereby leading to inequality.
- Same-sex divorce is allowed in countries like Canada, the UK, and South Africa, which show inclusiveness. However, for the LGBTQ+ community, divorcing in parts of Asia and Africa remains a huge legal issue since the same-sex marriage is not recognized.
- Immigration for people in the US and Australia depends on marital status, thus divorce can influence visa status and

residency. Divorcees may be deported or stripped of their citizenship rights. Treaties and agreements are now developed to harmonize divorce laws. A few of the examples are as follows:-The *Hague Conference on Private International Law* strives to harmonize laws in regard to child custody, maintenance, and assets division. Regional cooperation in the *European Union* has made divorces across borders easier through instruments such as Brussels II bis, which ensures judgements are consistent and applicable. The increasing interconnectedness of global societies calls for reforms and harmonization with a view to addressing jurisdictional conflicts, protecting individual rights, and ensuring fair results in cross-border divorces.

The evolution of divorce laws in India is a dynamic interplay between societal norms, cultural traditions, and legal principles. While these laws have progressively incorporated elements of equality and justice, their implementation and societal acceptance remain uneven. Divorce, once considered taboo, is increasingly seen as a legitimate means to escape unworkable or abusive relationships, signaling a shift toward prioritizing individual dignity and well-being over societal expectations. Women still continue bearing disproportionate burdens from maintenance and social prejudices, although men have also been demanding provisions that have neutrality in gender so their vulnerabilities could be addressed. This requires a multi-progressive approach. The legal mechanisms are to be reorganized, with a simplification process toward divorce procedure, mandatory follow-up for maintenance or custodial rights, and all this is to come from gender-neutral laws where and as applicable. Societal orientation must change about marriage and its dissolution through education, advocacy and public information campaigns breaking free from the stigma and the freedom from which choices are made without pressure or being ostracized.

In conclusion, laws of divorce and its outcomes have revealed the rather complicated relationship of a legal framework with values and gender dynamics in the society. It is not enough just to achieve legislative growths, but also has to create a society in harmony with individual autonomy as well as diverse family structures. If a bridge is to be erected between law and practice in India, it will certainly create a legal and social environment where divorce is not an

expression of failure but is instead an assertion of human dignity and the pursuit of justice.

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Police Reforms in The Wake of Custodial Death

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Abstract

Custodial deaths have emerged as a major human right issue in India. It has become imperative for the police force to be reformed in order to reduce the rate of custodial death. Despite the constitutional protection and judicial decision making, custodial violence and death are prevalent. This paper looks at the changes needed to be made in order to deal with deaths in custody and increase police accountability. This paper also explores the limitations of the previous act and looks into contemporary ideas which will emphasize accountability and human rights. The paper highlights the importance of implementing technological solutions such as CCTV surveillance in police stations and digital record management systems to ensure transparency. Institutional reforms such as independent police complaints authorities and strengthening National Human Rights commission. Newer ways of interrogation such as scientific interrogation techniques have to be introduced which will reduce the reliance on coercion and torture. This paper also talks about the cultural reforms to foster community-oriented policing and reduce police interference in police operations. A multi stakeholder approach involving the judiciary, government, society and the public to ensure accountability and transparency. By analysing the existing policies, judicial decisions and other practices from other jurisdictions the paper provides police reforms aimed at eradicating custodial deaths in India.

Key words: Custodial Deaths, Police reforms, Accountability & transparency.

INTRODUCTION

Custodial deaths are a systemic issue within the law enforcement system eroding the confidence of public trust on the system. India has witnessed several custodial deaths cases including a saddening case of[1]. This case sparked nationwide protests and demanded urgent reforms in the police practices. As per National

Crime records Bureau. The promise of the right to life and dignity mentioned in Article 21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law is often violated in custody[2]. Although some protection lines have been already drawn, the procedural guidelines given by the supreme court in the D.K. Basu vs. state of west Bengal (1997) case Custodial Deaths prove more on account of systemic failures, poor enforcement and lack of independent monitoring mechanisms[3]. This research paper examines the cause and occurrence of custodial death and evaluates the adequacy of legal measures. It analyses reform proposals to shift India immediately from an authoritarian to a human and justice-centred policing. Such reforms make good sense in retaining India's promise to the principles of human rights and the rule of law.

Causes And Context Of Custodial Deaths In India

Root causes of custodial Deaths

1.Use of torture and coercion during Interrogation:

Overall brutal torture in third-degree, both physical and psychological have assumed the position of leading cause of custodial death. As has been pointed out by law and the constitution, these measures were not to be used but were very useful in cases of forcing confessions or compliance from suspects. Most of the police officers have out-of-date investigative methods and obtain confessions under duress as the most salient form of evidence. The normalization of police brutality in India is viewed as one of the important adjuncts to maintaining public order which has brought this practice into currency.

2.Overburdened Police Force and Lack of Accountability:

There is a huge shortfall among the Indian police because, on an average, the police display only 152.80 officers for 100,000 of the population, which is far below the average of 300 per 100,000 worldwide[4]. This overburdened condition often leads to shortcuts in due process, where detainees are pressured to resolve cases quickly. There is lack of independence in police oversight mechanisms, such as internal inquiries or state human rights commissions which leads to a culture of impunity. Police often act under their political pressure which compromises their autonomy and leads them to resort to unethical practices.

3. Socioeconomic and structural Inequalities:

Custodial deaths go overwhelmingly with those belonging to marginalized communities like Dalits, Adivasis, and Muslims[5]. Structural biases within the police force generally end up getting these groups targeted for arbitrary arrests and excessive use of force.

4. Delay in Judicial Proceedings and Accountability:

Due to slow judicial processes, inadequate investigations, and lack of evidence, in most cases of custodial death, justice is delayed. Legal battles dissuade families of victims from going in for justice. Procedural safeguards during arrests and interrogations, though well delineated due to Supreme Court directives like D.K. Basu v. State of West Bengal (1997), are mostly ignored in practice[6].

LEGAL FRAMEWORK GOVERNING POLICE CONDUCT

Statutory Provisions and Guidelines

Bhartiya Nagarik Suraksha Sanhita, 2023, (BNSS)

- Section 43: Specifies the procedure for making arrests and prohibits excessive force unless the arrestee resists arrest or attempts to escape.
- Section 46: Explicitly prohibits the use of more restraint than necessary.
- Section 47 and 49: Guarantee the rights of an arrested person, including being informed of charges and the right to have personal searches documented

Bhartiya Nyaya Sanhita (BNS),2023:

- Section 120: Criminalize causing hurt or grievous hurt to extort confessions.
- Section 68: Punishes custodial sexual violence.
- Section 106: Addresses deaths caused by negligence, including custodial deaths.

Judicial Guidelines

In India, the role of the judiciary has been very important in the matter of police misconduct and the rights of individuals, especially in the case of custodial deaths and torture. Major judgments in this regard have laid down quite a comprehensive set of guidelines that are supposed to ensure accountability for and prevention of violations of human rights.

The D.K. Basu case vs State of West Bengal, 1997, wherein the Supreme Court laid down procedural safeguards to prevent custodial violence, such as mandatory informing of relatives upon arrest, preparing an arrest memo with all details of the arrest, regular

medical examination of detainees, and access to legal counsel during custody[7]. The verdict also laid down the condition of the installation of CCTV cameras in police stations, which were, in turn, made responsible for the contempt of court if these guidelines were not followed by the officer[8]. Even with the importance of the ruling, compliance has been less than satisfactory, often resulting in reports of failure to follow these directives.

In Prakash Singh v. Union of India (2006), the Supreme Court of India described the structure weakness and ordered changes for decreasing the politicization and increasing accountability of police forces[9]. The Court called for Police Act amendments that provide mandatory autonomy for states to create SSCs; to divide investigation from law-and-order functions for efficiency; and to create PCAs for allegations regarding police brutality, torture, deaths or other misconduct.

Recommendations for police reforms in India

1.Enactment of a New Police Act

The Police Act of 1861, which applies to most parts of India, is certainly outdated and does not provide an apt framework to tackle the intricacies of law enforcement as it stands today. It must be substituted with a new national police act that would genuinely inspire such democratic tenets like accountability and grievance safeguards against human rights violation. Important provisions should also include preventing custodial torture and deaths, with effective compliance mechanisms.

2. Ratification of the UN Convention Against Torture

In fact, India ratified the United Nations Convention Against Torture (UNCAT) in the very same year of 1997 but without ratifying the same. Ratification would also entail passing of a detailed anti torture law that would qualify custodial torture as an offence and prescribe severe penalties to the perpetrators under this sub provision. It would also mean independent inquiries into all the allegations of torture and violence in custody so that the errant officers were dealt with.

3. Addressing Political Interference

The major hurdle considering police reforms is the excessive political interference in the operations of police. The State Security Commissions (SSCs) should be constituted in all states, according to the direction of the Supreme Court, to ensure independent autonomy

of the police. Ratification would also mean passing a detailed anti torture law that would categorize custodial torture as an offence and provide stiff punishment to the offenders under this provision. It would also entail autonomous investigations of all claims of torture and violence in custody so that the delinquent officers would be punished.

4. Enhancing Training and Sensitization

It is recommended that police training curriculums should be redesigned to address human rights; the role of ethics and manners of handling detainees. Preferential attention to the training of employees who work with certain categories of citizens, including women, children, and others unrecognized by the society's minorities. Furthermore, curriculum intended for the management of occupational stress has to include psychological counselling and stress management due to legal requirement where among the symptoms of stress are aggressive behaviours of officers.

5. Separation of Investigation and Law-and-Order Functions

The fact that police agencies are more specialized and less integrated in terms of law enforcement and investigation may have some advantages. Therefore, a reduction in the prevalence of torture and coerced confessions will be facilitated by the expansion of specialized conducting bodies with staff for investigative reasons. These states should ensure that there are sufficient resources for the work and enhance the decentralization process.

6. Improving Accountability Through Technology

Technology is very useful in making transparency as well as minimizing the cases of such misconduct. This should be required during arresting and interrogating suspect and accused persons, since the records would help discourage any form of abusive actions. Some of the areas that need enhancement are the installation of the CCTV cameras in Police stations and other facilities that Police make for the periodic check of the CCTV tapes.

7. Independent Investigations for Custodial Deaths

The Central Bureau of Investigation (CBI) should be investigating all cases of custodial death to ensure impartiality. Postmortem examinations must be conducted in the presence of a judicial magistrate with video recording of the process. These measures will increase the confidence of the public in the justice system and ensure the offenders are accountable.

Challenges to Reform Implementation

The policing reforms processes in India involve many structural, political and social factors that make the work very difficult. While there has been some judicial progress, policy suggestions, and reform efforts in the past few years these have not produced the desired results because of these constraints. Problems have to be recognised and addressed in a way that there could be actual change on the way police conduct themselves including cases of custodial death.

1. Resistance from Within the Police Force

The police reforms which will increase responsibility are often resisted in the police department. Instead of adapting new practices for example, independent oversight mechanism or even stricter procedural safeguards which are very much needed are viewed as an intrusion in to the police department. This resistance is further made worse by the lack of any reward of any form that can encourage the adoption of reform-oriented practices.

2. Resource Constraints

Lack of funds and funding/ resource material still persist as a major challenge to the growth of the reform process. At other times, states simply do not change police architecture, buy new technologies or introduce measures such as the separation of investigation and policing functions because they are unable to afford it. The second reason that causes the difficulty is lack of resources to put in place PCAs and other forensic laboratories, and to operate optimally.

3. Inconsistent Implementation Across States

Policing is a state subject in India that is why there are big differences in the process of reforms implementation. This means that while some states have tried to do a reasonable job in reforming their police and adopting community policing, other states are relatively slower. Such disparities result in the system's structure being split where reforms are carried out and the efficiency of these reforms is relatively poor.

Conclusion

Custodial deaths in India are a rude wakeup call to the society on the inefficiency of the Indian legal and police systems. That this sort of thing happens in the context of Tamil Nadu, a state that boasts of a vibrant democracy with a sound constitution which

recognizes basic liberties suggests entrenched systemic and cultural problems in institutions and society. As mentioned earlier in Prakash Singh v. In the Prakash Singh Vs Union of India case, the failure to reform the police has led to the reinforcement of colonial police values of authority over police services to the people (Supreme Court of India, 2006)[10]

This paper has shown that the phenomenon of custodial death is complex and rooted in institutional and socio-legal factors as well as socio-political factors. Coupled with job insecurity, organized crime, human rights abuses, inadequately monitored places of detention, systemic prejudicial unsympathetic practices towards vulnerable categories of the population, the situation is worst as exemplified by the Sathankulam custodial deaths in Tamil Nadu; The Hindu, 2020). Still, even after intervention by oversight bodies such as the NHRC their recommendations rarely translate into adequate activity due to lack of teeth in implementing their directives (NHRC Annual Report, 2020)[11].

Comparisons with other societies, for example, relying on the case of the independence of the bodies that monitor the police in the UK and the focus on the non-use of violence in Scandinavia, positively illustrate that effective changes are possible both through local legislation and through the support of cultural changes (Amnesty International, 2021)[12]. Such measures, if implemented in India apart from the technological and procedural changes including body cameras and AI monitoring system could go a long way.

In the end, the solution to the problem of custodial violence cannot be obtained through individual contributions but through endeavours of the judiciary, government and civil societies. Underlying principles of policing reforms in order to give justice to victims and prevent recurrence of human rights violations includes; Unless such changes are implemented systematically and efficiently, recidivism of the custodial violence is inevitable, and this will scare away the general public from the criminal justice system hence eroding the rule of the law.

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The Narrow Line Between the Freedom of Speech and Expression and Defamation; Highlighting the Issue of Online Harassment

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Abstract:

This paper emphasizes upon the delicate relationship of the right to express oneself and defamation with an emphasis on the growing problem of online harassment. Harmful practices like hate speech, assault, and publishing images without consent are becoming more common on digital communication platforms, which puts both individual rights and social norms at higher risk . Furthermore, the study highlights that harassment is seen as more harmful when it occurs often as opposed to once, highlighting the necessity of context-sensitive responses.. This paper also discuss the legal framework of defamation not only in India but also in other countries . The paper also highlights the remedies and responses of online harassment . In addition, preferences for corrective measures differ according to the type of harassment, suggesting effective responses should be customized to address certain harms. To maintain both individual dignity and public conversation in the digital sphere, this paper proposes complex legal and social framework that protects freedom of expression while effectively addressing online harassment. This paper mention about real world examples and illustration that highlights the tension between defamation and free speech in online contexts and it also gives recommendations for balancing the right to speak freely and defamation . This essay promotes a fair legal system that addresses the increasing issue of [1]online harassment and defamation while protecting free speech. In order to protect individual dignity and encourage ethical digital conversations, it places a strong emphasis

on context-sensitive reactions, personalized remedies, and global views, ensuring that both rights and social standards are maintained.

Keywords : Defamation, Freedom of communication, Online harassment, Digital platform, Legal framework .

Introduction

Article 19(1) (a) of the Indian constitution declare that all the citizens in India entitled to voice their ideas, thoughts and opinion freely through any forms that are written, spoken words, gestures and through pictures or any other visual representation. This right is only applicable only to Indian citizens and not to international residents. this right is regarded as a fundamental component for the healthy democracy because it permits the people to express their opinion, and this allows them to participate in social and legal process of the the nation[1] According to article 19 of the International Covenant on Civil and Political Rights (ICCPR) the right to express oneself includes the freedom to seek, receive, and communicate thoughts and knowledge of any kind, irrespective of boundaries, whether by word or through writing, publication, visual art, or any other medium of an individual's determining.[2]

Defamation, a misrepresentation of fact that is damaging to another's reputation, The tort that permits one file a lawsuit for damages and, as such creates potential for journalists, other professional communicators or the average citizen.[3]

There are certain cases excluded for the same.

1. therefore, the exemption states there are specifies that truthful information for greater good with the large masses then is not included in this act of defamation The two basic elements are first that the information must be true information and the second that the information must be of the kind that will be for the benefit of the large mass of the population.
2. the exceptions are any act in which a public servant is censured for performing their public. Responsibilities or duties of critiquing his conduct and character where it seems that such conduct is wrong and not otherwise, then such act will not constitute defamation.
3. If any person gives his or her view or assessment of the actions of another person who carries out, any of the above-mentioned functions then he will not be guilty of the offence

of defamation a conduct regarding this is that such views/ opinion should be given in good faith/ honesty, if it is given otherwise then such act will amount to defamation.

4. This will not constitute defamation if any legal proceedings or the decision in any case rendered by the court published. Conditions attending to this are such that publication should be true and at that, or this point of time.
5. If any individual shares information about the merits of a case or the conduct of any person who testified in the case, it does not constitute defamation. However, the good faith is essential component here.
6. Any individual who comments on a female's ability or character, based on the author presenting themselves to public scrutiny, cannot be accused of defamation. However, for this to apply, the author must have explicitly subjected themselves to public judgement, if not such remarks will be deemed defamatory.
7. If any criticism of another person will not constitute defamation, provided the individual making the criticism has lawful authority or contractual authority over the person being criticized.
8. If a person with lawful authority over another makes an accusation against them, it will not be considered defamation.
9. Any accusation or imputation that may be made on another person as a means of safeguarding his or her own interest in whatever capacity he or she is, is not defamation.
10. Any caution that is taken for the benefit of that if done for personal reason or in the public interest, it will not be considered. as defamation.[4]

Historical Evolution of Freedom of Speech and Expression

Generally, the idea regarding the liberty of expression is as old as civilization itself but in specifics it can be looked at from the works of such prominent philosophers as Socrates and Plato. However, these ideas were not general and prevalent in all classes of people. The first sign of individual rights can be seen in the England's; Magna Carta primarily established the rights of the nobility, but it also included the rights to speak the truths. The enlightenment period was considered as an important period in the

transformation of freedom of speech. The enlightenment writers such as john Locke and Voltaire are on record supporting the right to articulate opinions and ideas suggesting that this represents the fundamental concept to free society and the search for truth. In United States, the first amendment to the constitution was adopted that completely endorsed the right to free speech and expression. It served as the initial step toward such rights being acknowledged by law. After the end of World War II, alongside the United Nations enacted the global declaration of fundamental human rights and stated that article 19, the liberty to hold opinions and communicate across the world. However, the article 19(2) allows justifiable limits on free expression to avoid defamation and contempt of court. The contempt court act 1971 of in India augments limitation of free speech in the country by criminalizing actions considered as a disrespect to Indian court system.

The issue of free speech is presumably timelessly discussed in such situation like the one with Prashant Bhushan where the criticism of the judiciary is disturbing as the lack of accountability in the legal system. The history of the right to vocalize and communicate freely faced continuous struggle to balance the individual rights, and the society needs, although a lot has been achieved the discussion is still important due to the recent issues arise since new issues continue to arise in the virtual realm age. [5]

Legal Framework

- CONSTITUTIONAL PROVISIONS: ART 19 (1) (A) – This provision provide the liberty of speech and communication to the citizens of India. It grants individuals the ability to voice their opinion, publish their ideas, participate in social and political matters freely without any restriction.[6]
- CONSTITUTIONAL PROVISION ART 19(2) – This provision imposes justifiable limitations on freedom of speech to safeguard India's sovereignty, integrity, state security, and foreign relations etc.
- CONTEMPT OF COURTS ACT 1971: Safeguard the honor of the courts and has limitations to free speech where the speech is considered as scandalous contempt The distinction that exists between the civil contempt as a failure to obey the court orders and criminal contempt when one scandalized a court or

prejudiced justice. the respect of free speech should not diminish the respect towards the judiciary[7]

- **Information Technology Act**, 2000:

1. Section 66A: Sanctioned for sending offensive messages on the internet, however this act has repealed now.
2. Section 79: Gives immunity to the intermediaries such as the social media agencies unless they refuse to remove complaints made concerning defamatory materials.[8]

- **International Framework, Article 19 of the International Covenant on Civil and Political Rights (ICCPR):** Accepts freedom of speech but permits its limitation for the sake of the reputation of persons and preservation of public order. So, India is a party to ICCPR by following the international standard in the terms of its domestic laws.[9]
- **Media And Regulation , Press council act** : This act governs the ethical standards of the journalism , ensuring freedom of press while preventing defamation [10]
- **Section 356 of Bharatiya Nyaya Sanhita**: This section addresses the matter of defamation it refers to defamation as to making a remark harming someone's reputation, with penalties is also mentioned in this section . certain exemptions also exist such as truth for public good, good faith opinions , fair comment , privilege , good faith accusations etc
- **Rajagopal Vs State of Tamilnadu (1994):** Having regard to the decision of State of Tamil Nadu (1994) is pertinent insofar as it demonstrated the conflict pertaining to free expression with defamation in India. India's apex judiciary bang out certain freedom for free speech to make democracy more active and powerful but it also focus on the reasonable restrictions that may be applied to free speech, which include the legal framework of defamation to safeguard the honour of individuals.[11]
- **Shreya Singhal V. Union of India (2015):** The legal matter of Union of India (2015) Although primarily a case dealing with Section 66A of the Information Technology Act, inter alia this case provided an important precedent for right to free speech and expression on the Internet and as a consequence the same can also be mentioned concerning defamation to the extent that

the key aspect of limitations on online freedom of expression alongside regulation of content is concerned.[12]

- **New York Times Co. V. Sullivan (1964) :** A legal case where the highest court in the US set the standard for the initial constitutional amendment for libel case for public officials . The judiciary slated that in legal proceeding for defamation, the claimant is required to evidence that the assertion made was false and that they made it knowing it was untrue or that he acted in wilful ignorance of the facts. This case is important as it situates the right to speech against defamation interests.[13]

Online Harassment

Online harassment involves the following behaviour which are hatred speech, insult, posting of one's personal details without their permission, sharing of humiliating photos or videos. Although social media websites invest a lot of effort to attempt to identify and moderate contraband material that may violate the existing community standards a handful of studied have taken time to establish the potential evils related to cyberbullying or preferred recourse to it. A online survey was conducted with adult internet users measuring the perceived harm and preferred remedies associated with online harassment. In study 1, perceived harm was considerably higher for non-consensual photo sharing, doxxing and reputational threats in comparison with other types of harassment . In study 2 it showed perceived harm to be higher in repeated compared to single harassment incidences, but there was no difference between individual and group incidence. In study 3 variance in remedy preference was found by harassment type such as banning users is rated ordinarily, but it is rated lower for non – consensual photo sharing and doxxing than for harassing family and friends and damaging reputation. The effectiveness of remedies for online harassment does not correspond with the severity of the harassment , this states that simply increasing the availability or the scope of remedies is not enough, these remedies must have tailored to the specific circumstance and context of the harassment to be truly effective. [14]

The recent increase awareness of defamation done online as being more severe as compared to traditional defamation can be attributed to these distinctive features of new digital era. This is the primary reason is why online defamation presents difficulties which

are different from offline defamation such as anonymity, quick spread and question of jurisdiction which increase its effects on individuals' reputation. Traditional defamation is normally achieved through formal media outlets including newspaper, television and the radio. These are some platform have editorial policies and are usually controlled by professional journalist who are in charge of the content they develop. On the other hand online defamation occurs on the social media, blog, post, and specific websites. This goes hand in hand with the freedom of information provided by the internet means where anyone can post information and since it is offered by non-professionals there is increased number of defamation. In traditional defamation the audience is generally limited to individual who read or watch the particular media platform. Although wide ranging in its application , it is not as widespread in that sense of the world. Whereas in online defamation the target market group is extensive and worldwide, one post can get liked, shared and commented by millions of people in few hours which is very dangerous to the reputation of the person. In the traditional accountability, legal principles rules that the burden of proof lies in the claimant. This in effect requires the person making the defamation claim to prove that the media statement made were false, unmaintained and caused the claimant identifiable loss. This framework aims at providing an appropriate relationship between freedom of press with the protection of individual from false damaging reports. The nature of online defamation also raises legal issues related to defamation that is anonymity and the speed with which information is spread. It is usually challenging to identify the perpetrators and varying laws across jurisdiction make it more difficult to take legal actions for similar case. [15]

The current civil law is insufficient to safeguard the intangible assets via the internet, mainly defamation. The present civil law is insufficient in containing particular legal principles that are adapted to the specific of the internet. Another difficulty in implementing the existing defamation laws is in the fact that a large part of communication on the internet is anonymous. It is very easy for many users to write defamation statements without any possibility of identification. This is mainly because the individuals can easily operate in anonymity, thus making it difficult for victims to be compensated or the offenders held accountable, as well as the

reputation of the victim being damaged. The legal remedies concerning defamation claims are sometimes very complex and time consuming , this delay can also compound the ill effect of matters published or said which are defamatory, for an individual's integrity maybe tarnished further in the course of the legal process. Civil law fails to deliver effective remedies in today's dynamic environment especially the digital age. There is an unequal approach in the world to regulate online defamation and said inequality comes from the fact that different countries have different laws to address defamation. Modern civil law fails to value the honour , dignity, and reputation especially in the cyber space. The existing law does not provide proper and sufficient protection to these asserts, which are on the rise when it comes to their exposure to cyber threats.[16]

Criminal defamation is the act of defaming a person in such limited to individuals who harm their reputation but is also a crime against society, which deserves penal action. This approach is used to preserve public order and societal harmony by discouraging acts of defamation. The main purpose of criminal defamation laws is to hold individuals accountable for speech or actions that damage another's reputation particular legal principle threatens the stability of society. The state prosecutes these crimes to maintain public order and morality. Protect people from malicious intent that results in serious reputational damage. Deter people from engaging in defamatory behaviour that could disrupt communal or professional harmony. Criminal defamation is a public wrong because the effect of its wrong is not only upon the individual victim but upon the society also. For example, Public communication of libelous matter can lead to social disturbance or threat to public peace. The injury suffered in criminal defamation is held to be serious enough to warrant state punishment. The important element of proof is to establish that the accused intended to harm the reputation of the victim. Although truth is usually a defence, it has to be proved that the statement was made in the interest of the public. Criminal defamation has penal sanctions and it is as serious. A period of two years under Section 356 BNS. Monetary penalties are also imposed to deter repetition and to compensate for the harm caused. In some cases, courts impose both penalties based on the severity of the defamation.

Tussle Between Right to Freedom of Speeh and Expression and Defamation

The tension between the freedom of speech and expression and defamation is one of the most complicated issues of freedom of speech and defamation laws differ across the world. The conflicts appears when people want to share their opinion for instance on social network as well as when people want to shield their image from destructive words. The defamation laws varies from one jurisdiction to another.

In United states , the defamation laws are said to exist in order to protect reputations but first amendment rights for freedom of expression have been placed on a higher pedestal as a founding right within the United states. For public figures , successful defamation action requires proof of actual malice. This usually means that the defamatory statement was made with knowledge of falsehood or with reckless disregard for the truth. Such a high standard reflects the U.S commitment to robust public debate, with potential harm to reputations.

In European Court of Human Rights the court has evolved a sophisticated line of cases to reconcile freedom of speech and the right of an individual not to have his reputation adversely affected. Its jurisprudence portrays a balance system of these rights and in some of these cases as in defamation, the court underlines the balance of these rights. The basic constitutional rights are taken into consideration when the speech is likely to cause a particular harm , is of the public interest and the individuals reputation. [17]

In United kingdom the litigation laws, specifically on defamation are more liberal as far as the claimant is concerned . In general, defendants are supposed to prove the truth of the statement or affirm that the statement qualifies for certain necessary supplied defences , including being an opinion of for the public's right to be informed. This system prefers personalities safety over free speech; thus it is a "Reputation Protection" system compared to, for example, the American one.

Australia has defamation laws based on the states and has been modified to be more liberal and protect reputation all the same. Some are a public interest defence which increases freedom of reporting and commenting on matters of public interest as it protects

this particular right and dignity while improving on the reputation rights of an individual. [18]

Recommendations

1. Advertisers need to know about what constitutes defamation and the current freedom of speech laws. This encompasses factors that distinguish between business and political advertising, because the latter has more constitutional protection.
2. This is a very important aspect as far as advertisers are concerned since they should provide information that is real and which can be defended to the later. For several reasons, truthful facts not only decrease the likelihood of a defamation claim, but will also make the advertisement more credible.
3. Advertisements should be made to help the society. A clear indication of the strategy of getting the content of an advertisement in tune with the public interest serves as a stronger defence against defamation claims.
4. That means that one cannot advertise anything that will harm the reputation of the other since you are not allowed to give out false information. Misinformation sharply rises the likelihood of legal proceedings for defamation.
5. Educating the audience regarding proper utilization of the speech and in specific reference to the utilization of social media , one is less likely to incite material that would lead to defamation. Teaching programs about how to think critically and designing digital etiquette can go a long way in reducing the toxic speeches.
6. Advisors should actively monitor and respond to the feedbacks this also indicates that advertisers should pay particular attention to the public and legal comments on their advertisement. One best way of controlling possible defamation problem is being active in tackling such concerns in advance
7. Documenting claims of the sources and evidence used in putting across the advertisement are helpful in defending the accused in a defamation law suit. This practice can help to show the positive intended to present accurate information.[19]

Conclusion

It appears that the protection of the right for freedom of speech along with the prohibition of defamation poses few biggest

problems defining establishment of freedom of speech, especially in the context of social media. Section 356 of BNS hold reputation as a kind of consent in India, these laws need to be checked afresh to make sure it does not subvert right to communicate .Globally, rules including firstly the New York Times Co. v. Sullivan [19]case highlight that higher standards must be met the in liability for defamation suits concerning the public or leaders, more important news (Yatsenko, 2024).

Hence it is essential to call for context-sensitive laws, raising levels of digital literacy, and global partnership in legal approach. All in all, it remains for free speech advocates to find a new equilibrium between the respective freedoms permitting enough protection against defamation for people to have their individual dignity reinstated simultaneously encouraging citizens to be ethical in their speaking.

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Efficiency of Restorative Justice in Juvenile Crimes in India- A Diagnostic Analysis

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Abstract

Restorative Justice finds an alternative approach to address crime. It focuses on transformation of the offender than on giving harsh punishment. Due the sudden increase in juvenile crimes in India the researcher in this paper sees the pros and cons of efficiency of restorative justice over a punitive justice and the efficiency of restorative justice if applicable in India. Philosophers like Albert Eglash, John Braithwaite and Howard Zehr focuses on active involvement of victims, offenders and community in justice process. In India Restorative justice is not integrated or codified directly in Juvenile Justice (Care and Protection of Children)Act, 2015 but integrated through practices such as counselling, community service and mediation. The implementation has many challenges such as lack of legal framework, overburden of court etc. The most important Mechanism of Restorative Justice Victim-Offender Mediation (VOM) is the main factor for in reducing crime rates in other countries. In India though it has a limited scope there were positive results through the implementation of this type of justice. The researcher in this paper assesses the efficiency of restorative justice in India focusing on recidivism rates. Victim satisfaction and offenders' responsibility or accountability. Further identifies the most important role played by community in reforming the juvenile offenders. At the end the researcher concludes by giving suggestions to implement restorative justice in India through bringing changes in the legal framework, by increasing the infrastructure and human resources and to increase public awareness for proper implementation of Restorative Justice in India for reducing the burden on the courts and thus reducing the juvenile reoffenders and juvenile crimes in India.

Keywords: Restorative Justice, Juvenile Justice System, Juvenile, Victim ,Offender, Community, Transformation, Socio -Economic, Efficiency.

Introduction

In the recent times Juvenile crimes had been a serious concern[1]. Teenagers are driven by a combination of psychological, socio-economic and environmental factors. They are said to be that they are capable of reforming themselves unlike the adult offenders. Worldwide the juvenile justice systems have emphasized upon retributive and reformative than punitive punishment. In India there has been an increase in juvenile crimes ranging from petty to serious crimes[2]. The main reason for this increase is the social disparities, lack of education, family issues etc.[3] Juvenile Justice(Care and Protection of Children) Act,2015[4]keeping all the challenges in consideration made the Act reformative in nature. The Act had various methods to incorporate reformative nature such as Mediation and other community involvement programs. This approach was taken into consideration as it had less probability of repetitive offenders. But there are many challenges of using this type of justice. Legislatively this legislation is not perfect as the concept of restorative is not codified ,further the executive body consisting of police, charge of remand homes is not aware about the working or the benefits which come out of this type of justice. There is a lack of resources in India, many unsolved cases which lead the court with overburden work. Generally, India follows punitive punishment mostly rather than retributive or restorative[5]. Which further make the implementation of Restorative justice problematic. There were some positive outcomes despite many challenges. The efficiency of restorative justice in India is of serious concern. Though there are proper legislative framework Juvenile Justice (Care and protection of Children) Act,2015 but there are many questions regarding its long-term efficiency on the juvenile offenders.

What is Restorative Justice?

The term Restorative Justice, a concept with a rich historical context, was practiced by Maori people of New Zealand who believed in community-based justice and reconciliation. It was first introduced by Albert Eglash (an American psychologist) in 1959. In his article, “Creative Restitution: Its Roots in Psychiatry, Religion and Law”, he described three types of justice. The three being

Retributive, Distributive and Restorative Justice. He identified that restorative justice focuses on repairing the harm rather than punishment, with the crucial and empowering involvement of the community[6]. In 1974, The Victim – Offender Reconciliation Program was introduced in Kitchener, Ontario, and Canada, marking the first practical application of restorative justice. John Braithwaite, an Australian Criminologist, further developed the concept in 1989 by bringing stigmatic shaming associates the offence with the offender and reintegrative shaming that condemns the action but offers the person a path back into the community[7]. In 1990, Howard Zehr, famously known as the "grandfather of restorative justice", popularized the concept of restorative justice through his book "Changing Lenses: A New Focus for Crime and Justice". He identified a shift from the punitive lens of retributive justice to Restorative Justice, which focuses on healing the victim repairing the harm and reforming the, offender, and community. The shift shows the importance of community in reforming offenders' behavior and promoting inclusive atmosphere. The sate acts as apparent of the child who needs to be transformed and must be in best interest of the child[8]. The whole concept of Restorative Justice, revolves around three key components: Victim, Offender, and Community[9].

Definition:

John Braithwaite – "a process where all stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm. With crime, restorative justice is about the idea that because crime hurts, justice should heal. It follows that conversations with those who have been hurt and with those who have inflicted the harm must be central to the process."[10]

Carolyn Boyes-Watso – "a growing social movement to institutionalize peaceful approaches to harm, problem-solving and violations of legal and human rights. These range from international peacemaking tribunals such as the South Africa Truth and Reconciliation Commission to innovations within the criminal and juvenile justice systems, schools, social services and communities. Rather than privileging the law, professionals and the state, restorative resolutions engage those who are harmed, wrongdoers and their affected communities in search of solutions that promote

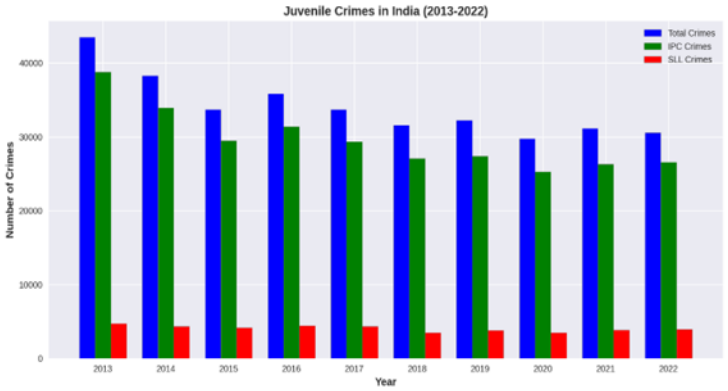
repair, reconciliation and the rebuilding of relationships. Restorative justice seeks to build partnerships to reestablish mutual responsibility for constructive responses to wrongdoing within our communities. Restorative approaches seek a balanced approach to the needs of the victim, wrongdoer and community through processes that preserve the safety and dignity of all.[11]"

The main objective of bringing the concept of restorative justice was to bring change in how people react to the offenders of crime. This concept believed in healing than punishment. This concept gives a second chance to the offenders to understand the crime they have done is serious and reform themselves. Not only restorative justice focuses on repairing the harm but also reduces the future offences and brings a sense of responsibility and accountability[12]. It also concentrated on speedy disposal of legal issues for aiming for social peace and order.[13] There are many mechanisms or many methods which aid restorative justice, some of them are Victim-offender Mediation (VOM), Restorative Circles, family group conferencing, community service etc.[14]. Various countries in the world such as New Zealand, Canada, Norway, Australia, Uk, USA, France etc.[15] follow restorative justice. New Zealand is the country called as the global leader in restorative justice especially within the juvenile justice system. The primary focus was on group conferencing[16]. Canada had federal and provincial government support restorative programs. Other countries had their own method. The studies shows that there was reduction in crime rate through this method[17]. But it cannot be the complete cure-all crime. In India Restorative justice is an emerging concept. Juvenile Justice, Mediation and Panchayats follow the concept of restorative justice but majorly Juvenile justice. The Juvenile Justice (Care and Protection) Act,2015 follows the principles of restorative justice. It has various programs such as counselling, community service etc. for reforming juveniles. There was 30% reduction in juvenile crimes between year 2013 to 2022[18].

Juvenile Justice System in India

In India Retributive justice the type of justice which is followed majorly. Like in the cases of murders and other violent offences retributive justice is followed which emphasizes on punishment. Restorative Justice is mainly followed in Juvenile crimes. Juvenile Justice (Care and Protection) Act is basically for

Children who are defined under BNS as “A person under the age of 18”in section 2(3)[19]. As young people or Children they are still considered to be in the development age they are more benefited by Restorative Justice than Punitive Justice. Keeping this in mind this Act follows the concept of restorative justice. From ages the Juveniles are said to be treated leniently. Last few years it has been observed that the crimes done by children between the age 15-18 have increased remarkably. Juveniles were treated the same way as other criminal offenders. Seeing this United Nations adopted a convention to protect the interests of Juvenile offenders. Way before The Juvenile Justice Act of 2015,2000 and 1986 there have been an Act named Children Act of 1960 which had uniform policy which protected interests and rights of juvenile. Due to progressive developments and emergence of community involvement in other countries, India was compelled to bring changes in the Act. Which further resulted in Juvenile Justice Act 1986. The convention adopted by United Nations lead to repeal of Juvenile Justice Act 1986. Thus, there was formation of new Act Juvenile Justice Act 2002.After the Delhi gang rape case the legislative was forced to bring up new laws which further resulted in The Juvenile Justice (Care and Protection)Act,2015.The juvenile justice system in India follows three basic principles first one being the juveniles should not be tried in court; They should get chance to reform and should get non-penal treatment[20].



Efficiency of Restorative Justice in India The best way to evaluate the efficiency of restorative justice is by three primary outcomes: Reducing Recidivism, Victim satisfaction and offender accountability. Reducing Recidivism means that there must be a significant reduction in the crime rate through this type of practice. In other countries it has been observed that implementation of restorative justice has significantly reduced the crime rate[22]. The reduction was done through addressing problems such as socio economic coditions,family issues etc[23]. Generally, victim's state of mind or emotions are neglected. The justice system focuses on punishment of the offender rather than emotional healing of the Victim. In restorative justice the victim's state of mind is taken into consideration. The offenders are held responsible for their actions , instead of punishing them with harsh punishments they have various programs to develop empathy towards the community through various programs.

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Community involvement in Restorative Justice

The most crucial role is played by community in Restorative Justice. Juveniles often are seen differently or are isolated ,but through the involvement of community through various family group conferencing, community service etc. helps the juveniles to be accepted in the community. Resolving the issues of minor offences at the community level the offences committed by juveniles can be

prevented at an early stage[25]. For this to happen the community must be well trained and should be sensitive to the offenders. By the involvement of Community, it can be said that it will build trust among the people and thus result in reducing the crime rate. In New Zealand, this has been practiced in the form of "Whanau" which means family conferencing. South Africa also practices community involvement in minor offences reducing the burden of judiciary.

India being a diverse country with various culture, different religions and socio-economic background makes the practice of restorative justice challenging[26] Rural areas may lack resources or may not have the knowledge of implementing this type of justice while urban areas may struggle with implementation because of the disconnect between the residents[27].

Challenges faced in Implementing Restorative Justice in India

1. Lack of proper legal framework

Though the Juvenile Justice (Care and Protection of Children) Act,2015 focuses on reintegration and rehabilitation but does not include restorative mechanism such as Victim-Offender-Mechanism or family conferencing. There is a legal ambiguity which lead to a great extent of dependency on Juvenile Justice Boards. Restorative justice in India is not codified which makes it challenging for implementing[28]. Unlike other countries where restorative justice is properly amalgamated in juvenile justice system make it not so challenging for implementing than in India.

2. Overburdened Judicial System

In India the courts are burdened with more than 40 million pending cases[27]. This enormous workload leaves only little room for implementing restorative justice. As Restorative justice requires proper attention and continues checkups of the efficiency and also lot of time dented by justice system for mediation and reconciliation process[29]. To reduce the burden of the workload the judicial officers may concentrate more on punitive justice more than restorative justice as it is quick.

3. Lack of infrastructure

There must be proper infrastructure for mediation centers, remand homes, there must be trained facilitators and restorative justice units in courts and juvenile justice boards for efficient implementation of Restorative justice. In India there is lack of both

physical and human resources. The remand or observation homes are mostly crowded and are not so well equipped[30].

4. Reluctance by Victim

For implementing restorative justice there must be involvement of victim in the process. But in India the victim or victims' family may fear to engage in restorative process thinking that it may reduce the seriousness of the offence[31]. Offences such as sexual offences or domestic violence, murders etc. may fear the victim to participate in the process.

5. Gender dynamics in India

In India there is a lot of influence of caste and gender on the laws. Thus, there will be implementation on restorative justice too which will further complicate the implementation of restorative justice. Caste and gender bias may lead to pressure by community mediation and pressure them to reconcile against their will[32].

Victim – Offender Mediation in India

This practice or mechanism is the most important mechanism in the practice restorative justice worldwide[33]. It is the direct conversation between the victim and the offender with the objective to understand and address the harm caused and both parties reaching a mutual solution. Bradshaw and Rosebrough claim that VOM is almost three times more effective traditional retributive measures for reducing the crime rate[34]. It has been shown that this practice is most effective in juvenile crimes in other countries while its application in India is limited and has shown unique challenges. India still does not follow VOM evidently and is not yet the mainstream of practice of restorative justice[35]. Indirectly it is followed through the traditional practice of mediation in the form of panchayats. There were many pilot programs in metropolitan cities like Delhi, Mumbai and Bangalore held by various legal aid organizations has shown promising outcomes though the scale was limited. There are various benefits of VOM in juvenile justice such as Victim's emotions are considered, this practice brings a sense of responsibility and accountability among juvenile offenders, there are comparatively less reoffenders and this practice can solve matters quickly thus putting less burden to courts. Along with benefits there are some issues of Victim-Offender Mediation such as:

1. India follows the concept of 'Parens Patriae' which means that the respective state act as a guardian of vulnerable

groups. But,VOM slightly violates this concept as it shifts the responsibility from the state to victim.

2. Due to India's adverse judicial system which follows the procedure of prosecution where the victim's role is limited to only witness but in VOM the whole responsibility is on Victim making victim more uncomfortable.
3. There should be trained mediators for efficient VOM or else the practice of no use.
4. The practice or mechanism of VOM is limited as it's not effective in the cases of heinous crime done by juvenile crime.
5. The main concern in VOM is about the undue advantage used by offender by blackmailing, coercion etc. influencing in the decision of Victim.

Challenges in implementing the VOM are that

- There is no proper framework for VOM thus making it challenging for implementation.
- There is limited awareness of VOM among judicial officers,community,social workers etc.
- Lack of infrastructure and human resources
- Indian society believes or accepts punitive justice than non-punitive justice such as -VOM.
- Socio economic, gender and caste inequalities can make it challenging for implementation.

Suggestions

To strengthen the efficiency and adoption of Restorative Justice for juvenile crimes in India following are recommended :

1. Legislative Reforms – To amend Juvenile Justice(Care and Protection of Children) Act 2015 by codifying the concept of Restorative Justice by establishing clear provisions for Victim – offender Mediation, restorative circles and community based restorative practices[36].
2. To provide proper training for Judicial officers – Provide proper training for law enforcement personnel, judicial officers and community[37].
3. Create Restorative Justice Centers – Create restorative justice centers within juvenile justice boards[38].
4. Educate the society about the pros of this type of justice through various workshops, campaigns etc[39].

Conclusion

Thus, it can be concluded that restorative justice is a good and efficient alternative for punitive justice. Restorative justice indirectly in India has been effective and had positive effects though it had limited scope. If Restorative justice was codified in the Juvenile Justice Act there may be an immense amount of reduction in juvenile crimes and its implementation would be easy in India thus reducing the burden on the courts

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Condition of Refugee Children in India: A Critical analysis of regulatory framework

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Abstract

The paper focuses on the Conditions and Legislation to administer the refugees' children in India. The researcher has explained the conditions of the children in refugees CAMPS India. The researcher analyses the situation and legal regime regulating the admission of refugee children to India. Admission of refugee children to India has, all along, involved a multi-tiered process of legal and procedural mechanisms that qualify for and ensure protection of refugee children in this country. Health services, provision for food and shelter, camp conditions, and even discrimination are the gray areas where we lack to take care. India too has, over time become a wee bit bureaucratic in the refugee status determination process. Eligibility and documentation requirements in it have been over-stringent. As of now India follows international norms through administrative decisions although Ind. has not signed to the 1951 Refu. Conv. Refugee children can't be enrolled in schools and they also lack with the accessibility of health care as it is limited. Measures adopted as regards their rights and welfare also include children protection. This also brings in Art. 15 (3) of the Indian constitution. The major statue to safeguard the stateless and undocumented children is J.J (Care and Pro. of Child.) Act. But there is nothing particular here about a refugee-specific policy in these legislative instruments. The NRC tries to document its citizens thus leaving out certain undocumented refugee minors from whom one might be declared a stateless person. Proposals with the CAA, 2019 are so worded as to achieve the grant of citizenship of refu. who are the nationals of some other country and countries with which India shares common boundary except for such fresh

registration of refugees and their children who happen to be the followers of Islamic faith.

Key words*:* Refugees - Children

Introduction

India has always been known for its rich culture and values which the people of the country follow, and there are a lot of people migrating from their own countries because they are having threat in their native country. Few of the cases where India stood for the refugees can be seen in case of Tibetan refugees in 1950s, Refugees' entry from Bangladesh during Liberation War 1950s and many more like the most recent Rohingya crisis. In all the situation during the crisis India has come in front and supported these refugees due to their non-refoulement policy. In terms of hospitality India has always followed the principle of "Atithi Devo Bhava". The situation to manage refugees largely in ad hoc situations is crucial but the major lacking is a need for well-structured legal framework or legislation specific to refugee management. This issue is of major concern as it hampers the most vulnerable group of people in these refugee camp who are innocent minds. In a place of challenging environment these innocent minds face a lot of struggles as they don't have any document which authorizes their statehood. They are homeless with lacking of various necessary aids. As the basic law of every country person with Statelessness can't access legally verified identity, healthcare and education which is a very basic need for a growing child. Because of these restrictions and uncertain situation these children face discrimination and exclusion from the society which don't have any solution till now. According to various reports and data citated in this paper, the conditions in refugee camps are harsh for growing children with extreme situation of overcrowding place with inadequate hygiene, lack of sanitation and no sufficient access to nutrition, because of which the children in the camps are often exposed to harsh physical and mental conditions like malnutrition, trauma, anxiety, and various chronic diseases. Apart from these health conditions India is also lacking to provide good educational facility which is leading to poverty and marginality among the refugee community. The Indian general child protection mechanisms became the only resort for children as there is no dedicated refugee law in India. This resort sometimes is effective although it fails to address the problems pertaining to the most

vulnerable group who are children. There are laws and provisions for protection to these children which are given under Art.14 and Art. 21 of TIC (constitution) and also J.J. (Care and Pro. of Child.) Act, 2015.

*"**Art. 14** (EQL)Any person who comes within the jurisdiction of India should not be treated unequal and should be safeguarded"*[1]

"Art. 21 (*POLAPL) any person's life and liberty should not be disturbed with an exception of any law specifically mention"* [2]

But these laws don't directly safeguard the refugee children. By not having a Central policy safeguarding the interests of the refugees and children they face a lot of trouble and it also leads to the denial of the basic Rights and privileges which are given to the citiz. of the country. Also, through the recent amendments and laws it has become more problematic and challenging to sustain the rising crisis of growing refugee population by introducing Citizenship Amendment Act (CAA) of 2019 and National Register of Citizens (NRC). National Register of Citizens, 1951 also called as (NRC) which is a register prepared after the conduct of the Census of 1951 in respect of each village, showing the houses or holdings in a serial order and indicating against each house or holding the number and names of persons staying therein. The NRC was brought out only once, that is in 1951. The rationale for introducing and then revising the NRC in Assam relates to the identification of illegal migrants found in Assam, who have come to Assam from Bangladesh during the war of 1971 against Pakistan. And, similarly adding to NRC, Citizenship Amendment Act (CAA) of 2019 also known as (CAA) passed to provide Indian citizenship to such undocumented immigrants who entered India on or before 31st December 2014. Such an Act was passed for those six different religions, including Santan Dhrama, people who follows guru Nanak ji, who follow Buddha, Jains, Parsis, and who follows Jesus from Afghanistan, Bangladesh, and Pakistan. Any person would be considered entitled to this act if he/she has been a living in Ind. for the last 12 months and for 11 years of the preceding 14 years. For the said class of illegal immigrants, the residency period has been reduced from 11 years to five years. And due to these laws refugee children are always excluded and particularly the children who are from marginal or minority community.

And this approach led to discrimination and unequal protection of law towards these minors in the refugee camps. While always lacking in having a formal codified legal framework for refugees, India always leaned towards the administrative discretions and Judiciary to deal with the refugee related matters. As the only saviour courts have protected the refugees when they faced in problems interventions are rarely seen as per the specific cases and it also don't have regularity. The most vulnerable groups which are Children fells uncertainty when they face any difficulties, this fragmented approach is not good for these innocents.

Conditions for Refugee Children in the Refugee Camps

Living Conditions in Camps: The conditions in the refugee camps are very dire and because of the over crowded situation it becomes more challenging to refugee children to develop. The survival in the camp is full of struggle as these camps lacks the basic facilities which should be given to the people living in these camps like proper hygiene, clean drinking water, proper place to sleep. In these vulnerable situation children are the one who suffers the most. The lack of clean water also increases the probability to get the diseases such as stomach related infection, hypertension and Communicable disease although these diseases are curable but can be dangerous when ignored because there are no facilities in camps to operate these things. Overcrowding in the camps is highly responsible for communicable diseases. The situation of overpopulation heightens the threat of harassment and exploitation. Children growing up under such circumstances usually suffer from growth-related developmental retardation and untold long-term effects on their health and productivity.

There are testimonies of refugee's children across many refugees' camps which tells the conditions of these camps. Testimony of Rohingya Crisis: *"All the food we had was finished. We were starving for days. The boat was not big enough to hold a lot of people. I can't remember how many people there were, but we barely could move [as] we were sitting so tightly together. We had no water to drink. Some people drunk water from the sea. They got sick later. We were at sea for almost two months. I saw a man dying and the broker threw the body into the sea. The broker beat us when we asked him to turn around and go back to Bangladesh. I never thought I would survive."*[3]

There are many more chest falling testimonies of children from refugee camps of getting traumas due to these inhuman conditions. These situations show the struggle of these children to get basis needs which proper nutritious food, proper shelter and many more things which is required to live. Due to these conditions in vulnerable place of camp, these refugees are lodged towards poverty and deprivation.

Barriers to Education and Healthcare

The very basic need of every child is to access education and healthcare as education is fundamental right and only thing which can reduce the poverty. In order to get admission and access education, it is needed to produce their Identity card and other documentation. But the refugee children lack to access it as they don't have any documentation. So, these are the barriers which becomes an obstacle for the development of the innocent children. And this led to discrimination specific to these children of refugee camps and normal children who are citizen of the country. The lacking of a framework for the refugee children to get admission excludes the refugee system from education system. And this is also reflecting in the global report of UNHCR. The reports say about *"Proportion of refugee children and young people enrolled in primary and secondary education 72% of children enrolled in primary education in 90 countries 45% of young people enrolled in secondary education in 87 countries"*[4]

Also, when we discuss about necessity healthcare and proper medical facility is also not accessible properly to the refugee children. And no documentation of these children is the reason to not get access to hospital. *"Proportion of people with access to health services: Over 75% of refugees and asylum-seekers in 75 countries Over 75% of stateless persons in 9 countries had access to health services"*[5]

Refugee children with chronic diseases or disabilities are in even worse situations, since such specialized care is unavailable or unaffordable. And no access to healthcare facilities makes the conditions of diseased refugee children worse day by day, which also decrease the life span of refugees in comparison of other people.

Capacity of International Organizations

UNHCR main function is to address the requirement of the Refugee children all over the world. But In India, UNHCR is

providing scarce services, such as refugee registration, legal assistance, and basic services in some of the camps, but the scale of the crisis calls for actions involving far greater capacities than those of these kinds of organizations. However, without coordination between international agencies and the local government, it diminishes the impact of all such interventions. Efforts put forward by UNHCR are appreciated but they clearly need much stronger supports and cooperation from the governmental setup to face these crises situations with the children as refugees.

Legal Framework regarding Refugee Children in India

All the people of the nation and the undocumented people are also safeguarded under the fundamental rights given under TIC (Constitution). Art. 14 and Art. 21 is guaranteed to these people which ensures equality before law and RTPL (Right to life and personal liberty).

*"**Art. 14** (EQL)Any person who comes within the jurisdiction of India should not be treated unequal and should be safeguarded."*[6]

"Art. 21 (*POLAPL) any person's life and liberty should not be disturbed with an exception of any law specifically mention"* [7]

Because of judicial interpretation these articles are also protects the refuges so that they can live their live peacefully with dignity.

The SC has also given a landmark judgement in the case of *National Human Rights Commission v. State of Arunachal Pradesh & Anr. 1996 AIR 1234*

"We are a nation of the Rule of Law. Our Constitution has rights for all humans — and other rights for citizens. Every person residing in Indian should be treated under the eye of law. Similarly, no man can be deprived of his life or personal liberty without procedure established by law. So, the State is obliged to safeguard life and liberty of each human-being, be it citizen or non-citizen, and it does not have authority to allow any individual or collective body, for instance, AAPSU, to intimidate the Chakma's to quit the State, if not they will be compelled to vacate the State. Not a single State Government is entitled to permit such assaults by group of persons on another group of persons; it is duty bound to protect threatened group from such assaults and in case it fails so to do, it will fail to perform its Constitutional as well as statutory obligations. Such threats would invite action against the threateners, according to the

law. The State Government has to act dispassionately and exercise its legal duty to protect the life, health and well-being of Chakma's inhabiting in the State without being constrained by local politics. Further, the Chakma's are denied the rights, constitutional and statutory, to put their applications for consideration for being registered as citizens of India by refusing to forward their applications."[8]

Although this case was not specifically was for the refugees and the children. But judicial interpretation is the only way on which these refugees can depend upon which also not possible every time, and lack of a legal frame work makes the conditions of children challenging in the refugee camps.

Legislations for the prote. of Child.

The main problem of this scenario is the lacking for refugee specific legislation in the country. This situation adds to the problems facing refugee children. JJ (Care and Pro. of Child.) Act, 2015 is the main law which protects the children but the protection for refugee children is not specifically mentioned in the statue. As a consequence, many of these refugee children fall into legal loop-holes and can never be accessed to the protection and services they require.

The entry, stay and deportation of people living outside of Ind. is governed by The Foreig. Act, 1946. The Act is very administratively oriented without human consideration, especially concerning the protection of vulnerable sections of people, such as children. Its punitive measures regarding unregistered migrants often deteriorate refugee children's situation more and make them further marginalized instead of improving them.

NRC and CAA Policies

The administrative policies such as NRC and Citizenship Amendment Act, 2019 have worsened things for the refugee children. The NRC aims at creating a genuine citizen list but this process has excluded several undocumented minors of refugees who have now become stateless. Even though CAA accelerates citizenship for a particular religious group, it excludes Muslims from this process, which leads to a discriminatory result for the children of refugees from that minority community. These policies reflect a lack of coherence in refugee policy in India and rely much on administrative discretion and judicial intervention. This makes for

highly uncertain conditions for the refugee child, who finds himself neither here nor there legally or socially.

Comparison with other country's Legislation

- **Canada**: In Canada due to Immigration and refugee protection act allows refugee children to access proper education, legal aid and medical facilities. And this type is of legislation is lacking in India to address issue of refugee children. Further, the Act compels consideration of the welfare of children in decisions related to asylum and is a child-centred approach to the management of refugees.
- **Germany:** One example for the social integration of refugees is Integration programs of Germany. Due to this program many of the refugee children can access education and medical facility and education of their country language so, that they don't have any language barrier in the country.
- **Kenya:** Kenya has provisions of children under its Refugee Act as a result of its especial vulnerability. With resources that are as limited, the state has policies it employs in the protection and care of refugee children found in camps and their rights to essential services.

Research Gap

- **Lack of Refugee law**: India does not have defined legislation on refugees, and thus it can only depend on administrative decisions at times. These time and again ad-hoc decisions of administration are most biased and unevenly impact the refugee children. Hence, it becomes a cause of huge problems for the said children to get access towards education, health, and social security.
- **Uncertainty of Judicial Interpretation**: The protection of refugee is completely governed by the judicial interpretation which is not certain as there is no law which protects specifically refugees of India. An informal legal framework leaves refugees to the whims of political change and, worse still, impairs India's ability to manage the situation effectively.
- **Socio-Economic Differences:** The lack of legislation for the refugees makes a disparity like discrimination, no access of basic rights and privileges.

Recommendations of solution of the research gap

1. **Legislative Reforms**: There should be a national refugee law which should include provisions for protecting refugee children which can ensure education to them. Also, there should be inclusion of domestic laws with international obligation in CRC. The purpose of Convention on the Rights of the Child is stated in Art.1 of CRC: *"For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."*[9]
2. **Change in policies:** The documentation which is required to the refugee children to access education should be revised and every one should be given equal chance to access education. And there be monitoring wing which will ensure the standard in the refugee camps for the living conditions of refugee children.
3. **Collaborations:** India should make collaborations with the NGO's which focus on making the refugee conditions better in camp, and these NGO's will help in giving medical facilities and education to the refugee children. There is a need to bring coordination between international bodies like UNHCR and local bodies in the course of efforts to control the refugee crisis scale.

"UNHCR, the UN Refugee Agency, is an international organization dedicated to saving lives, safeguarding rights and strengthening hope for people forced to flee from war and persecution. We help to protect those people who flee in conflict and persecution and uphold the right to ask for safety."[10]

Conslusion

The Indian case of refugee children reflects broader inadequacies of the legal and administrative systems of this country in dealing with the complexity of forced migration. Overcrowding, poor sanitary conditions, limited sources of clean water, and relatively poor availability of nutritious food thwart the physical and mental growth of refugee children in horrible camps of living. When the aforementioned is combined with less health and education access resulting from cumbersome documentation procedures, these children are doomed forever into poverty and destitution. India Dependence on constitution and JJ ((Care and Protec. of Child.) Act,

2015, Such dependency might appear to offer protection but cannot avail specific protection for refugee children. The judicial interpretation would benefit in such specific cases but not be a substitute for the formal and codified structure of law management that could well handle refugee issues. Panchami Purty and Madhu Sarin. It seems that this will be the case where NRC and CAA 2019 policies have further marginalised children refugee, largely from minority and have brought out statelessness and exclusion. Analysis into India's approach to refugee management shows critical lacunae among which it has in issues concerning children, one of the most vulnerable groups in every situation. A comprehensive law for refugees coupled with integration programs; along with child-specific protection; ensures the well-being and all-around development of a refugee child. These can be dealt with only if India comes out with a national refugee law that includes child-sensitive provisions and accords with obligations towards the CRC. So, in order to get an environment for refugee children to be protective and health, India should have a consistent and inclusive approach.

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The Fiduciary Paradox: How Insider Trading Distorts Market Equilibrium and Legal Boundaries

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Abstract

This paper discusses the complexities of insider trading in India, emphasizing its effect on market equilibrium and the legal boundaries which it breaches within the securities and exchange board of India regulatory framework. While generally, the world is more concerned about insider trading due to gaps in regulation and inefficient mechanisms of enforcement in the Indian Market, this research draws attention to the lacuna in insider trading regulations despite numerous amendments in the last few decades and compares this with the international frameworks, especially that of the United States. The most important observation here is that insider trading is not being checked due to the lack of proper surveillance and enforcement rather than any inadequacies in the laws themselves. Exploring tension in the fiduciary duties of corporate insiders who possess the opportunity of wrongful misuse of nonpublic information which is price sensitive in terms of unfair advantages within and relating to capital markets leads one to the arguments through cases for stricter enforcement according to international best practices pertaining to market integrity protection regarding protection. The role played by SEBI in terms of execution of their regulatory powers with respect to preventing insider trading and addressing related issues. Further, suggestions are provided to improve transparency and the ability of SEBI to curb insider trading to provide a fair ground for investors and ensure equitable trading practices in financial markets.

Keywords: Insider Trading, SEBI Regulations, Market Equilibrium, Fiduciary Duty, Legal Boundaries, Securities Market, Regulatory Enforcement, Emerging Markets, Corporate Governance, India.

Introduction

Amongst the most debated and ethical issues in financial markets today, insider trading remains highly controversial and generates substantial concerns about its impact on the integrity of the market as well as investor confidence. It is defined as a misuse of non-public price sensitive information by insiders, a practice that upsets equilibrium in the market and places investors at an uneven advantage. Despite the fact that a few developed countries, among which are the United States, have well-developed, completely integrated systems designed to curb insider trading activities, enforcement and regulatory oversight have always plagued India's securities market.[1] After a string of amendments to the SEBI Prohibition of Insider Trading Regulations, such measures never resulted in substantial deterrent effect to insider trading operations.[2]
The fiduciary paradox, where the fiduciary obligations of corporate insiders clash with their personal economic incentives, most accurately captures such an underlining tension within regulatory regimes. In Indian practice, such fiduciary violations largely remain unremedied due to a weak system of surveillances and delayed probes.[3] For instance, despite the SEBI norms appearing comprehensive on paper, in practice, their implementation at the grassroots level is hampered by resource constraints and the lack of high technologically sophisticated real-time monitoring software.[4]
Moreover, comparative works depict
That is, frameworks such as the U.S. SEC that use AI and data analytics for proactive enforcement have been far more effective in reducing incidents of insider trading.[5] This paper explores how insider trading distorts market equilibrium, reviews the challenges SEBI faces in regulation, and makes recommendations based on best practices elsewhere.

Theoretical Foundations of Insider Trading

The concept of insider trading has emerged as a core theme of research and regulatory discourse because of intense implications on the integrity of financial markets and investor confidence. Insider trading has very vividly been described as a misapplication of privileged, material information by the fiduciary insiders including company officials or financial analysts.[6] This unethical act goes beyond causing disequilibrium in the marketplace; it also creates a trust-less atmosphere among investors particularly in developing countries like India.[7]

Legal scholars would argue that insider trading violates the very core of corporate governance because it undermines the fair distribution of information-the essence of efficient markets.[8] These debates usually bring into focus the two sides of fiduciary duties: a corporate insider has the duty to act in the best interest of the shareholders but tends to exploit the confidential information for personal monetary gains.[9] Agency theory is a more particular model that also expresses the conflict of interests between principals and agents.[10]

In the Indian context, insider trading has been further compounded by the rapid growth of capital markets that have overtaken the development of the regulatory framework.[11] Though SEBI regulations attempt to address this issue, the limited enforcement capacity and lack of monitoring tools in real-time makes these regulations ineffective.[11] It address the issue of regulating insider trading and to ensure the effective implementation of the policies, it is important to understand the theoretical foundation of insider trading.

Insider Trading Regulations In India

The regulations for insider trading witnessed significant transformations which included provisions for greater governance, market efficiency and to make provisions for market It established the first comprehensive set of regulations for dealing with insider trading in 1992.[12] The board recognized the damage such practices have on investor confidence and market integrity. Since then, the regulations have been amended multiple times, most notably in 2015 when SEBI harmonized its approach under the PIT Regulations.[13]

The regulatory framework of insider trading laws presents certain challenges. Despite the shift In the approach of framing regulatory framework in 1992, regulatory weakness and limited investigation capabilities limited the efficiency and effectiveness in the execution of insider trading laws.[14] One area that has been the case is the lack of live monitoring systems, which have allowed insider trading practices to survive and often outstrip the regulators.[15] SEBI relies on complaint-driven reactive investigations, whereas its counterparts like the U.S. Securities and Exchange Commission (SEC) rely on proactive surveillance mechanisms.[16]

For instance, the process of inquiry carried out by SEBI generally involves long drawn litigation, which pushes back the

imposable penalty time and thereby, waters down the very purpose of the enforcement action. Case studies like Satyam scam and the Infosys whistle blower case epitomize these deficiencies and hint the need for a more efficient mechanism in place to detect and check the act of insider trading at the nascent stage. Besides that, the regulatory agencies do not share and the The judiciary has frequently yielded inconsistent rulings, which has further complicated SEBI's enforcement efforts.[17]

The 2015 PIT Regulations brought several salient provisions to address such challenges, such as greater disclosure norms for insiders and surveillance mechanisms.[18] The implementation of the provisions has, however shown inconsistency, and critics pointed out that what is needed for such provisions are better inter-agency coordination and stronger technological integration. Comparative analysis shows that there is scope for valuable insights for SEBI's modernization efforts from the enforcement framework of the SEC's Market Abuse Unit, which employs the use of big data analytics and machine learning in finding suspicious trading patterns.[19]

Comparative Analysis

Insider trading regulations differ significantly from one jurisdiction to another, mainly because of the legal frameworks, market dynamics, and even mechanisms of enforcement. The most prominent one was the United States.

For example, the U.S. Securities and Exchange Commission has taken severe regulatory actions to try and form preventive mechanisms against insider trading, including the high-tech method of the Market Abuse Unit, utilizing data analytics and AI to detect violative conduct and implement punishments efficiently[20]. The active approach today is vastly different from what was undertaken in India primarily based on complaints and whistleblower reports.[21]

The United States model is most known for deterrence through speed and finality. The Securities and Exchange Commission model is the most notable in terms of real-time monitoring, expedited legal processes, and penalties that ensure deterrence. In India, lengthy investigations and the lack of technology applications often allow infractions to continue.[22]

The SEC in the last few decades had not noticed cases and acquitted high-profile cases, which include insider trading of Martha Stewart's case.[23] Nevertheless, the same institution here in India

failed to meet the delivery of justice properly, just like in Satyam scandal.[24]

One of the main features of the U.S. Model of regulation of market is the efficiency and strength of inter-agency cooperation and judicial precedents for violations in insider trading.[25] This model of governance has helped SEC to instill confidence in the process to prevent malpractice in trading and ensure market efficiency. Observing the role and function of SEC, the role played by SEBI in regulating the market is comparatively weak.[26] Comparative studies highlight, as well, the role of technology integration in filling up gaps of enforcement. In particular, the SEC embracing of AI-powered pattern recognition systems has dramatically enhanced its capacity to detect suspicious trading, which by proxy forces SEBI to overhaul surveillance systems as well.[27] More important, international best practices point out

Investor education and public awareness campaigns, as a preventive measure, will keep off insider trading by creating a culture of compliance.[28] Therefore, while India's regulatory environment has evolved considerably over time, best practices from the international domain, such as in the United States, would further underline the need for more assertive and technology-intensive compliance. By enforcing all these practices mentioned above, it ensures the regulatory compliance of the stakeholders and provides equal opportunity to the participants of the market.[29]

Discussion

Through an analysis of the fiduciary paradox, this study reveals how ethical violations among corporate insiders can disrupt market equilibrium and erode investor confidence.[30] Despite the availability of all-encompassing regulations under the Securities and Exchange Board of India's Prohibition of Insider Trading (PIT) framework, enforcement is often reactive, allowing significant violations to go undetected and unpursued at the earliest opportunity.[31]

Market Integrity and Investor Confidence

Insider trading is so damaging to the integrity of the market. In transparent markets with fair access to information, insider trading operates antithetical since it is a gross favoritism towards an elite section.[32] For instance, inequality of information compromises the tools for price formation and keeps the retail

investors away who hold an impression of market unfaithfulness. Satyam scandal evidences systemic failure in corporate governance that aggravates the issues so much more requiring stronger deterring factors and corrective measures with much greater urgency.[33]

Comparatively, U.S. SEC's proactive approach towards enforcement, like the real-time monitoring using AI, is quite different from the slow complaint-driven approach of SEBI.[34] In this regard, SEBI could enhance its capability of detecting suspicious trading patterns with similar technologies.[35]

Challenges in Enforcement

The major problem afflicting the Indian regulatory landscape is that of inefficiently working mechanisms, which is mainly due to constrained resources and fragmentation.[36] Dependence by SEBI on manual investigation, further combined with judicial judgments with time lags, detracts from its prompt responding to violators.[37] Not only does this lack of inter-agency coordination intensify the flaws, but it also leaves opportunities which insiders capitalize upon.[38] The case of the Infosys whistleblower was indicative of how protracted time frames characterized SEBI's procedures, hence delayed justice delivery and an erosion of public trust in the overall regulatory infrastructure. Remediation of the situation d emands the overhaul of investigation and surveillance systems focusingon advancements in technological co mpetence and cooperative working among different agencies.[39]

International Best Practices and Lessons for SEBI

A comparative analysis of insider trading regulations gives very helpful insights learned from: jurisdictions like the United States. The market abuse unit of the SEC has been a benchmark since it is highly dependent upon big data analytics and machine learning.[40] In such a way, SEBI can make its surveillance system turn from reactive to the predictive one and deter the violators in advance also.[41] However, best international practices include investor education campaigns and awareness initiatives.[42] Such campaigns are designed towards creating a culture of compliance regarding the ethical and legal implications of insider trading.[43] For SEBI also, such campaigns can function as an ancillary along with enforcement action to see that regulations are not merely comprehensive but

understandable by players in the market.

Role of Fiduciary Responsibilities

The fiduciary paradox remains the heart of the debate about insider trading. Corporate insiders, bound by both ethical and legal constraints, are most often tempted by the financial gains of insider information.[44] This is where stricter corporate governance standards and mandatory training programs in fiduciary duties and legal consequences of insider trading must be implemented.[45] Further, the implementation of whistleblower protection frameworks, as adopted in the U.S., will enable employees to express unethical practices without fear of reprisal.[46]

Future Directions

There are three reforms-technological integration, inter-agency coordination, and outreach to investors-that SEBI needs. First, using AI-based surveillance tools will fill the gap between violation and its enforcement because SEBI is able to track anomalies on real time. Second, the coordination between SEBI, judiciary, and others will be streamlined to cut on delay in the process of the investigation.[47] Third, through continuous education campaigns, investor trust in the markets would be reinforced so that India's capital markets will not be treated as opaque or unfair.[48]

Conclusion

This research paper would critically examine "The Fiduciary Paradox: How Insider Trading Distorts Market Equilibrium and Legal Boundaries," based on its applicability in the Indian securities market. From a very detailed consideration of the regulations put in place by SEBI, some critical deficiencies in enforcement could still be found despite repeated attempts at amendments to reorient insider trading regulations in stronger directions. The other thing worth noting is that even though the regulations for insider trading in India, like the SEBI Prohibition of Insider Trading Regulations, 2015, seem soundly designed, the current mechanisms or strategies are not so effective in surveillance or enforcement. In comparison with the international best practices, particularly of the United States, this study underlines the pressing need for improving enforcement to protect market integrity and to further investor confidence.[49]

An important contribution of this study is in its research on the fiduciary duties and wrongful use of inside information by corporate insiders. The discussion analyzes case law and practices of

the regulator to describe how these wrongs are used to shift the equilibrium of the market, hence creating an unfair field for retail investors. For instance, the case of Rakesh Agrawal v. SEBI underscores the challenges faced by the prosecution in insider trading as a consequence of evidential issues and procedural delays. This means that the application of global frameworks, for instance, U.S. Securities and Exchange.

According to a study, the enforcement tools of the Commission would require practically reformative measures such as advanced surveillance technologies and punishment for violations.[50] However, research does identify constraints involving the reliance on open access data and an extreme extent towards law structures instead of greater market forces.

Those provisions, however, provide lines of research that could pry deeper into the behavioral orientations of insider trading and examine their lasting implications on efficiency in markets. Overall, the research contributes to the growing discourse on regulatory enforcement in emerging markets and can be seen as a stepping stone toward policy-level changes to strengthen the Indian securities market against insider trading.[51]

Way Forward

This research shall provide a platform for a number of potential future studies on regulation and enforcement of insider trading in India and globally. Such examples include empirical studies that have a better focus on market efficiency and investor confidence caused by the economic impact of insider trading. Such real-time mechanisms, leveraging advanced data analytics and machine learning tools, in detecting insider trading, will really bridge the gap currently present within the SEBI surveillance framework. India would then find itself aligned with the best in global practices, and such an act would turn out to be a benchmark for other emerging markets.[52]

Another area of research would be a comparative study of behavioural and cultural factors influencing insider trading in different jurisdictions. A combination of interdisciplinary approaches, marrying legal analysis with behavioural economics, could bring forth new understanding of how regulatory interventions can be used to curb unethical practices. Such research would be incredibly valuable in framing policies that might be

suited to India's unique socio-economic landscape.[53]

Future studies might focus on the aspect of technology in reinforcing the principles of transparency and accountability of the securities market. In fact, recordable trades and monitoring of insider tradin g would find answers in the technology ofblockchain. Cooperatin g with the fintech companies will then transform compliance practices and also come up as cost-effective solutions for the regulators.[54] Finally, the research findings should be a wake-up call for collective actions among policymakers, market participants, and scholars. The result of such collaboration might be integrated solutions to tackle the root causes of insider trading and to create responsible corporate governance. The culture of compliance and accountability may thus be built up, so that the Indian financial system turns out to be fair and transparent to all its constituents.[55]

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Understanding Double Taxation: An Overview, Challenges, DTAAs & Need for Uniformity

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Abstract

The effect of Double Taxation occurs when two or multiple jurisdiction tax on the same income or economy, especially When India strives to hold and strengthen its position in the Global market, economy, or forum. The population of India specifically the Taxpayers and the International entities or organizations that trade with India face the said issue of Double Taxation creating a burden not just financially but economically, these kinds of challenges are resolved through treaties, investments, and territorial exemptions, however these measures are complex and create an additional financial burden on individuals and international institutions. This paper primarily discusses the complex relations and a multidimensional approach to Jurisdictional, policy, cross-border investments, and Double Taxation Avoidance Agreements. Countries like India have a unique tax landscape shapes the countries tax reforms and regulatory frameworks often making cross-border taxation uncertain for both individuals and businesses. A much more structured approach to this is to consider to adapt a uniform tax regime especially the Indirect Tax facets, Moreover, attention to simplifying these processes ensure to reduce redundancies, compliance costs, Bilateral Tax Treaties, foreign investment, and trade. This process of liquidating the Tax structure in terms of ensuring Tax fluidity help in predicting obligations in terms of tax encouraging a structured approach to Individual transactions, Cross border investments and foreign trade that expand reach not only in India but beyond the borders cultivating a equitable and a

multifaceted growth in Trade and Tax culture, specially avoiding Double Tax.

Keywords: *Double Taxation, Double Taxation Avoidance Agreements, DTAAs, Cross-Border Taxation, Tax Jurisdictional Challenges*

INTRODUCTION

The concept of Globalization did not only allow free trade without restrictions with it has also came a lot of world economies together, however this also attracted a lot of challenges especially in the tax regime in terms of International Taxation.[1] Among all these issues there on underlying common issue when it comes to Double Tax, where the same income or earning is taxed twice in under the same jurisdiction namely concerned with individuals and Multinational Corporations and other territorial jurisdictions engaging themselves in Cross-border investments and trade. One of the main sources or eradicating or partially mitigating this effect in various transactions Bilaterial agreements and Double Taxation Avoidance Agreement (DTAAs) that ensure structured frameworks, policies, and reforms in delegating taxing rights with individuals of a specific nation or with nations themselves in various transactions and trades. These agreements are designed to ensure that tax paying citizens are not arbitrarily or unduly taxed due to errors in the system that lead to overlapping tax obligations. Thus, assisting in inculcating a conducive and a cohesive trade and tax investments world-wide.[2]

DTAAs address various issues that arise through tax policies also contributing to jurisdictional challenges, these agreements are designed to determine the Source or residence or origin of the incomes, clarifying and understanding the concept of permanent establishment and establishing clear guidelines for taxing of business revenues and profits, dividends, and royalties of individuals. These agreements ensure legal certainty in trade and investments, prevent MNCs from fiscal evasion and encourage equitable growth in taxation especially in cross-border transactions. However, this concept has been introduced with many gaps and ambiguity in implementation especially when there were jurisdictional guidelines with regards to tax has already been laid out as seen in the case of Vodafone, that has highlighted how Mergers and Acquisitions that happen globally effect out tax system but the case makes

interpretational challenges of such treaties vague and difficult to interpret and implement.

Furthermore, with the rise of E-commerce and Digital economies the extent of Double Taxation has extended beyond traditional and primitive tax structures, now also addressing treaty shopping and Base Erosion and Profit shifting (BEPS), and intangible assets that are taxed upon.[3] These agreements are structured in such a way that they encourage, promote, and establish justness, fairness, effectiveness, and neutrality in tax systems that is constant, consistent and ensure fair implementation by multi varied jurisdictions.

This research draws relevance from historical background in avoiding such effect and contemporary modern significance of their role in encouraging Multinational corporations while acknowledging the current policies and reforms. It highlights the need for structured agreements that align with various jurisdiction and mitigate the jurisdictional challenges as well as individual challenges pushing us towards a more refined and a uniform tax system that align with global economies and technological aspects.

Core Objectives

- To understand the role of DTAAs in preventing Double Taxation
- To understand the effect of Double Taxation on Jurisdictions and Scope
- To understand challenges and practical application of DTAAs
- To analyse the need for uniform tax structures

Research Methodlogy

- Literature Review:
  An extensive review of various existing literatures on international tax, Double tax and DTAAs. This paper discusses includes research papers, tax legislations, case laws and international tax standards (established by OCED)
- Case Study Approach:
  Specific topic-oriented cases related to cross-border transactions have been referred to understand the contemporary situations caused by tax disputes.
  - Qualitative Research:

Detailed analysis of Judicial rulings, court interpretation of DTAAs and resolved tax disputes, analysing the case laws, identifying trends and judicial reasoning.

Historical Evolution

Even though the concept of Double Taxation has always existed in our tax structures, this evolution shows progressive efforts of nations in clarifying and understanding the need for taxation of cross-border income, trade, and investments.[4]

Before the Evolution of DTAAs the concept of Double Tax has become prominent as a challenge and concern in the economy in the beginning of 20th century where economy, trade and investments have expanded beyond the scope of just domestic borders.[5] In 1928, The League laid down the Model Tax Conventions, primarily focusing on income and caption taxation, these treaties laid ground rules of Taxing rights between source and residence of countries, elaborating on reducing financial restraint by reduction of tax on individuals and businesses fostering cross-border activities, free trade, and investments globally. Post the implementation of the Model Tax Convention, Bilateral agreements have been adopted on these conventions, providing a multifaceted approach to addressing Overlapping income classification, Permanent Establishment, and varied approaches to Avoidance of Double Taxation primarily either by means of exemption and credit methods.

Furthermore, India has only recognized that DTAAs began post-independence when the government understood the attracting foreign trade and investment. The foundation for DTAAs was through one of the first DTAA in Denmark 1959, World-wide the importance was only understood after World-War II, most economies sought after to rebuild their economies and encourage transaction beyond borders which only happened through the Bilateral Treaties. A significant milestone in this realm was only established in 1991, with India's economic liberalization, that has opened the gates to the markets facilitating robust tax structures opening the market to global trade and foreign investment. Agreements namely such as that of Mauritius DTAA, provided incentives for capital inflows by establishing clear tax liabilities and reducing risk.

International organizations namely Organisation for Economic Co-operation and Development (OECD) have shaped the DTAAs globally. The first published OECD model on tax convention in 1963

became standardized framework for facilitating Bilateral Tax Treaties, keeping the foundation same as league of Nations, model convention providing procedures for dispute resolution. In the past few years, OCED's Base Erosion and Profit Shifting (BEPS) initiative has significantly influenced the development of DTAAs, Procedures like Multilateral Instrument modernize treaties addressing treaty shopping and artificial avoidance of PE status.[6]

Double Taxation Avoidance Agreements (Dtaa)

The concept of Double Taxation Avoidance Agreements (DTAAs) provides solutions to challenges due to Double Tax especially as far as jurisdiction is considered. These agreements ensure fairness, justice and economic trade and reducing tax burdens and disputes. Double Taxation occurs when the same income is taxed double under the same jurisdictions.

These are international treaties that happen between two or more countries from getting taxed twice, the provisions related to DTAAs help in eliminating barriers and promote free trade. In India DTAAs are governed by the virtue of Chapter IX of the Income Tax Act, 1961[7] that provides relief. Article 256[8] lays to no tax can be levied upon by anyone except under the authority of law, Entry 14 – List 1 in the Seventh Schedule gives that power to the Union to negotiate and enter into contracts these treaties have a binding effect by virtue of Section 90, Income Tax Act, have the same effect as the Domestic Laws.

Furthermore, Section 90[9] allows India to get a relief from Double Taxation, address tax evasion and aid in administration of Tax. The relief mechanisms in order to provide relief include the taxation rights are only confined to one of the contracting parties, The income taxed at source is credited against the liability on the residence state. These mechanisms are set in place to ensure fairness and prevent Double Taxation, incomes that earned by means of dividends are taxed in both states but with limits.

Moreover, Section 90(2), Income Tax Act[10] states that where DTAA exists that overrides Income Tax provisions, in some circumstances this may vary if the latter is more beneficial to the taxpayer, ensuring that the benefits are always prioritized.

DTAAs are much more comprehensive and wider, thus, covering various aspects of income, capital gains and other taxes. Most Indian Treaties are modelled on the OCED Model Conventions

which are dynamic in nature suitable to the Indian Tax structure. India has over 79 DTAAs with various countries ensuring engagement with international entities.[11]

INCOME TAX ACT V. Dtaas

The interplay between Domestic Tax Laws and Double Taxation Avoidance Agreements (DTAAs) has been crucial, The Income Tax Act, 1961 and provisions of DTAAs have specific rules to address discrepancies that ensure that taxpayer benefits.

(i) Reference to Section 90(2)

This section of the Income Tax Act establishes the supremacy of DTAAs in circumstances where it is more beneficial to the tax payer. This provision was primarily added to ensure that the tax payer gets to choose between a Domestic Law and International treaties whichever is more beneficial to the taxpayer. In the case of **CIT v. Vishakhapatnam Port Trust[11]** has enforced this principle that overrides authority when it is in the interest of the payer.[12]

(ii) Dynamic Application procedures

The dynamic approach provided to taxpayers in choosing between Domestic law and DTAA provisions if a part of the hallmark tax regime in india, allowing them to maximize incentives. These payers can opt for framework that is either on yearly basis or annually. Section 90(2)[13] ensures that taxpayers can utilize DTAA provisions for specific types of incomes. Moreover, this framework allows various approaches for multiple states enabling DTAAs for one and domestic tax laws for another, but this system may create tax ambiguities. [14]

(iii) Interpretation and Judicial Precedents

Discrepancies and gaps in definitions and interpretations under the Act and DTAAs have significant scrutiny from judiciary for various reasons. In the case of **Siemens A.G. v. ITO**[15], courts have interpreted the Income Tax act was executed, barring amendments. The ambiguities in system, royalty or interest often favour DTAAs preferred, ensure treaty alignment, and avoid double taxation or income misclassification. [16]

Application of Dtaas: Contemporary Challenges

The contemporary approach to DTAAs is much validated in ***Vodafone Holdings B.V. vs. Union of India[17]*** which has become a landmark case in evaluating cross-border taxation disputes involving taxation disputes in the indirect tax regime[18].

The case revolves around acquisition of a major stake in Hutchinson Essar Limited offshore transaction in 2007. Vodafone, being Anne Hutchinson from Cayman Islands does not have direct involvement with Indian entities however the tax authorities in India argued that the transaction indirectly or directly transferred Indian assets thus creating a taxable asset under the Indian tax laws.[19] This issue highlighted the applicability of domestic tax laws to transactions even if they had international elements and indirect involvement within Indian entities. Vodafone has stated that the transaction was with two international entities without the involvement of Indian entities thus falling outside the ambit of jurisdiction of Indian tax laws, Vodafone argued that DTAAs Between India and Netherlands has ensured protection against such taxation that was retrospective in nature emphasizing the necessity of having certainty in cross-border transactions.

The Supreme Court has ruled in the favor of Vodafone in the said case holding that that this particular case has not attracted any capital gains from Indian entities pause falling beyond the scope of Indian jurisdiction and Indian tax laws. This judgment was landmark in understanding the importance of legal entities which may be our individual or a business that have contracted under double taxation avoidance agreements. This concept has reinforced a predictable and certain tax structure ensuring that taxation occurs only in the jurisdiction permitted under the said treaty.

This case illustrates the practical and contemporary approach of double taxation avoidance agreements in resolving conflicts challenges and ambiguities that are a part of cross-border transactions emphasizing the supremacy of domestic laws in certain contexts but not in all. [20]It lays down the need for the taxpayer to choose a beneficial tax structure to avoid discrepancies and disputes, for the legislature this case has laid clarifications on introductions of Income Tax Act including the amendments aimed at taxing indirect transfers of Indian assets thus striking a balance between adherence to domestic sovereignty and international tracks treaties, As for tax authorities this was a means to implement lows in such a way that our uniform in nature with both domestic and international norms to avoid challenges and protect the country’s image in terms of investment decisions.[21]

Who Can Tax And Who Can Avail Benefits?

A Double Taxation Avoidance Agreement determines whether the income should be taxed at Source or at the residence. For immovable property the income is taxed at the residence, giving the owner the right to claim tax in that residence.

For Businesses, state of residence unless entity has a permanent establishment in the source state, such an establishment is taxed at Source state. In multiple instances courts have clarified that the income is to be taxed at source as also established in the case of ***CIT v. R.M. Muthaiah***[22] have specified that income 'may be taxed' at source states and restricts the residence states from taxing again.

Various Income categories like dividends, interest and royalties may or may not be taxed both at the source and the residence, DTAAs include mechanisms are there to mitigate concerns that arise due to Double taxation. However, in terms of state, there are exemptions given by the residence state and the credit method, tax paid at source state is credited against the liability of residence state**.** [23]

To claim benefits of DTAA, individual or entity must be a resident of at least a contracting state – Article 1 of the OCED Model Convention states that a person if considered a resident if they are liable to tax for an individual or a resident it is essential to note that they are obligated to either pay tax at source or residence.

Life of Treaties

The Central government in India has the rights to enter into Double Taxation Avoidance Agreements (DTAAs) by the virtue of Section 90, Income Tax Act, 1961[24]. The provision allows the government to negotiate treaties mitigate this problem allowing trade and investment, once the provisions are finalised, they are published in the official Gazette, adding to the Income Tax Act. In the case of **CIT v. Kulangadan Chettiar**[25], Supreme Court has clarified DTAAs act as means to modify Section 4 & 5, that govern the tax on the total income. Additionally, Entry 14, List I – Schedule VII of the Constitution of India give power to the union to negotiate treaties. In the case of **Meghabhai v. Union of India**[26] along with the rational established in **Azadi Bachao Andolan**[27], DTAAs can have predominance over domestic tax ensuring favourable treatment, thus, aligning with cross-border activities.

A DTAAs is unlike a normal contract that ceases to exist over time or fulfilling the functions but continues unless terminated one of the contracting states. Courts in multiples instances have clarified that DTAAs provisions are in force for the assessment year.

However, the implementation of DTAAs is a dynamic process that is influenced by both domestic and internation tax structures and reforms – overtime the complex cases in terms of tax also effect the statue by means of amendments, ambiguities and legislative mechanisms, DTAAs strike a careful balance between international economic activity by means of trade and safeguarding tax revenues.

Double Non-Taxation: Concern

Double non-taxation occurs when the income is not taxed both at source or the residence of the country due to various emerging concerns with regards to legislative concerns, regimes, incentives. Even if DTAAs avoid double taxation they can result in escaping the system altogether as we can see in Treaty Shopping as well. DTAAs provisions are such that income or revenue is directly taxed at the Source state, however, if the source state decides to give an exemption from domestic laws the entire income or revenue remains untaxed. In the case of **CIT v. Laxmi Textile Exporters Ltd**., [28]Madras High Court stated that the income earned by the company in Sri Lanka can not be taxed in India even it went untaxed there.

Treaty Shopping

Treaty Shopping occurs when entities route income or investments through other jurisdictions to have benefit over Double Taxation Avoidance Agreements (DTAAs) to avail incentives. These jurisdictions also called as "Treaty Havens" having minimal to no activity inside the borders. For instance – Indian Mauritius DTAA has capital gains imposed on the sale of shares are taxed only in the country of residence. Mauritius does not have a system of Capital Gains Tax (Indirect Tax), many companies incorporate there only to deflect and avoid paying tax in India, but this concept creates non-taxation rather than Double Taxation undermining fairness in cross-border tax by allowing organisations minimize tax liabilities and depriving source countries their means of income generated through tax.[29]

In the case of **Union of India v. Azadi Bachao Andolan**[30], the Supreme Court upheld the legality of Treaty Shopping – DTAAs do not prohibit third parties from benefiting especially they cannot be

denied favourable terms. Treaty shopping results in loss of revenue but does not violate any provisions of any law.

Need For Unifrom Tax Structures

There is a need for uniform tax structure especially when it comes to global trade and economy in fostering economic stability this reduces complexity and enhances compliance. This existence of diverse tax systems across various jurisdictions has not only created challenges but coupled with domestic laws and double taxation avoidance agreements results in ambiguities related to compliance challenges a standardized tax frameworks minimize inconsistencies and discrepancies bye clarifying tax definitions reads principles across jurisdictions this ensures an equitable treatment of cross-border income and reducing the risk of double tax being imposed on incomes of individuals order of businesses.[32] Uniformity in tax laws promotes clear guidelines on transparencies Making it easier for businesses and investors to plan their finances. For developing countries and economies such as that of India, oh cohesive structure aligned with international tax norms strengthen investment flows enhanced trade relations and help in growing global competitions. Uniformity does not mean jurisdictional sovereignty but aligning the principles of domestic trade laws with that of international trade laws in ensuring a uniform structure to have a fair trade and investment economy in the global market.[33]

Conclusion

The interplay between between both domestic laws and double taxation avoidance agreements between specific jurisdiction powers and international tax framework to promote economic cooperation. Income Tax Act of 1961, specifically section 902 provides benefits to the taxpayer allowing flexibility in choosing. However, this flexibility has its own set of cons such as procedural complications, territorial challenges, selective application procedures and year-on-year choices, these must align with the judicial precedents and laws. Challenges of definitions interpretations statute and treaty supremacy that have always been subject to judicial scrutiny in cases as discussed in this research paper such as **siemens A.G. v. ITO[34]** and **CIT v. Kulangadan Chettiar[35]**, have reaffirmed the importance of double taxation avoidance agreements in resolving these challenges and ambiguities. The landmark case Vodafone exemplifies the challenges that occur in cross-border transactions

wherein the Supreme Court has clarified jurisdictional limits between paying tax and avoiding double tax thus ensuring legal certainty[36]. This dynamic interplay has reflected India's commitment and ensuring that global tax norms and domestic tax laws added an alignment this framework is to ensure that is equitable transparent conducive cohesive international trade and investment.

Furthermore, in the cases of *azadi bachao andolan*[37]reinforcing GD supremacy and guiding the principles of royalty and interests was enforced these rulings have emphasized the importance of balancing a static nature even with stringent domestic laws. The paper has explored concept of treaty overrides source and residence state taxation implications that have occurred due to cross-border transactions. By fostering a uniform tax system that adheres to both domestic and international standards become the hub for investment while also addressing the challenges that occur due to globalization.

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The Invisible crime: Marital Rape and the Legal Struggle for Recognition

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Abstract

Marital rape remains one of the ultimate overlooked and misunderstood styles of violence, hidden in the back of cultural norms, criminal loopholes, and societal silence. This paper, "The Invisible Crime: Marital Rape and the Legal Struggle for Recognition", seeks to get to the lowest of the layers of injustice that preserve survivors trapped, focusing on how laws, traditions, and attitudes keep to deny their voices. Using examples from countries much like the United Kingdom, South Africa, and India, this have a look at explores how a few worldwide locations have taken steps to criminalize marital rape, while others although grasp to previous beliefs that prioritize manner of existence over human dignity. It famous the profound physical, emotional, and mental scars survivors endure, made worse by means of using prison systems that fail to shield them and cultures that stigmatize their testimonies. India's Section 375 IPC, for example, highlights how legal exemptions perpetuate harm, contrasting starkly with present day reforms in countries like Canada and Japan. The findings underscore an urgent need for trade. Marital relationships need to be constructed on mutual understand and consent, not on preceding thoughts of possession and submission. The paper calls for motion on all fronts—legal pointers that protect, societies that manual, and systems that empower survivors to rebuild their lives. Recognizing and addressing marital rape is greater than a prison necessity; it's a ethical important. Only then can we flow towards a global wherein every character, married or no longer, is handled with the respect, equality, and humanity they deserve.

Keywords - Marital, consent, Gender Equality, Legal Reforms, Cultural Norms, Survivors,, Victims, Sec.375 of IPC, Social stigmas and taboos

Introduction To Marital Rape: Legal And Social Definitions

Marital Rape or non-consensual intercourse inside a conjugal relationship, is a complicated and a tough trouble which comes throughout legal, cultural and non-secular landscapes globally. Unlike the opposite styles of sexual violence. With so many aspects of marriage, gender roles, and coverage concerning personal rights, it holds a composite crossroads in relation to them and for this reason, defining as well as highlighting marital rape often oppresses with the notion of tension, thus there are numerous and most unique viewpoints on whether forced sexual acts in the marital household can be termed and in a legal sense described as marital rape.

By the usage of words of felony, marital rape is uniquely defined from us of a to nation. For example, in some international locations such as U.S, South Africa, and the United Kingdom, marital rape is understood as an intense and grievous crime, prison protections and safeguards to similar persons who are married to their opposite counterparts. The definitions in such international locations makes a speciality of private autonomy upholding that being married does no longer offer husbands of sexual access to their other halves or losing the right to disclaim sexual intercourse through a spouse. Many nations oppose this concept of notion involving India, Pakistan and parts of Middle East, they nevertheless helps "marital rape exemption"[1]. The laws in these global places often emulate traditional views of marriage as a union conceding and permitting non-conditional sexual intercourse in a conjugal relation through husbands on their wives.

Marital rape is socially and manner of life misinterpreted and stigmatized. Marriage in most societies is regarded as an undertaking where husbands hold all authority and rights over his spouse, and this is particularly evident in the society with strong patriarchal values. Such cultural norms will act as a barrier to make marital rape a crook and grievous crime as they assume the effect that marriage does not associate to continuous consent. Religious clarifications also describe how human beings perceives marital rape. Contemporary interpretations voice for physical autonomy and underlines and highlights mutual recognition and mutual consent

which uphold and support the concept that marital relations wish to provide into line with human rights. This spectrum of practices further indicates that the definition and identification of marital rape have involved religious beliefs, criminal structures, and cultural norms that interfere with every extraordinary concerning whether or not marital rape is dismissed or noted. In international locations where marital rape do no longer legally recognize marital rape, victims face greater issues because of lack or no criminal systems, protections or safeguards are being laid down in positive international locations and in these international locations that have criminalized or recognized marital rape as a grievous crime, enforcement can nevertheless be inconsistent because of cultural pressures or stigmas which does not motivates reporting of marital rape instances due to worry of social denial or own family pressures[2]. The enquiry of recognizing and criminalizing marital rape encounters approximately marriage, autonomy[3]. Legal definitions alone are not sufficient, there needs to be trade in cultural attitudes and social guide structures. A nuanced knowledge is required that's one that respects cultural context while additionally assisting fundamental and human rights.

Legal Frameworks in Other Nations: Criminalization and Cultural Barriers (Global Perspectives)

The legal bearings on marital rape varies on a wider scope globally which replicates the difficult interplay of cultural, societal and religious values which influences how each nation addresses and recognizes marital rape[4]. The distinctions of recognizing marital rape in different nations highlights the challenges of accomplishing universal protection against marital rape, as each country's tactic is shaped by unique cultural norms and legal histories.

Several nations have taken footsteps to identify marital rape as a grievous or severe crime, growing it as an essential issue of human and fundamental rights and gender equality. In such nations, legal reforms and policies finds to emphasize consent and bodily autonomy in marriage and to move public attitudes in marital relationships.

1. United Kingdom: In one of the landmark cases, they eliminated the concept of binding consent within marital relations, formally recognizing marital rape as a severe or grievous crime in 1991.The ruling redefined marriage as a partnership of

equals, resonating globally and instigating former British colonies to think outdated marital rape exemptions again.

2. Turkey: The nation criminalized marital rape in 2005. Cultural resistance remains strong especially in rural areas with traditional values. The nation's journey sheds lights on international standards which encourages national evolvement.
3. Indonesia: Cultural values and religious norms play substantial roles in figuring impertinences towards marital roles and sexual consent in a marital relation. In certain communities, women feels pressurized to accept their husbands demands due to social stigmas and taboos and because of these reasons, it contributes to underreporting and limited awareness of marital rape as a human rights challenge[5].
4. South Africa: They criminalized marital rape through comprehensive reforms and policies in its sexual policies and procedures. Their constitution strongly chains and ratifies individual rights which offers a foundation for criminalizing marital rape. South Africa's success also disclosures continuing challenges in enforcement as societal stigmas and taboos can still decrease victims from seeking legal recourses[6].
5. Malaysia: Their legal framework's concerning marital rape remains vague and unclear due to the influence of Islamic law and has also taken steps to address domestic violence, marital rape is not unambiguously criminalized as marriage is often seen as giving implicit consent.

Contrarily, many countries have profoundly entrenched cultural and religious notions that prevent them from identifying marital rape as a serious or heinous crime. Traditional views of marriage permit males to dominance within the marital family members that can impact the legal and philosophical structures concerning marital rights and legal systems.

1. **Pakistan:** Their crime apparatus blends Islamic and British common law and does not define or recognize marital rape as a serious crime. The social and religious traditions of Pakistan, which accepts sexual consent as part of the marital relationship, does not spur reporting and limitation measures for protection and safety from crimes but criminal law revisions and statutes encounter opposition by the right-wing politicians who believe that such laws are against family traditions.

2. **Nigeria:** Where common, statutory and Islamic criminal methods and policies coexist, marital rape legal guidelines vary on a much wider scale. In most areas, it remains unrecognized, while customary legal guidelines in other areas also support husband's authorities over their better halves and the criminal fragmentation hides efforts to provide victims and survivors with constant get admission to to justice and safeguards.

3.**Japan:** Criminalized marital rape in 2004, Cultural importance on family privacy and harmony makes it difficult for victims and survivors to seek help. Many women are under coercion to prioritize household unity, indicating how cultural values can hamper enforcement even where legal frameworks exist.

International organisations such as United Nations and Amnesty International, Constantly supports for the recognition of marital rape as a violation of human rights. CEDAW treaty encourages countries to accept measures that addresses gender based violence which also involves marital rape, also emphasizing human rights by encouraging comprehensive protections and these frameworks impacts policies and procedures which depends on how international human rights perspectives aligns with country's cultural and religious values. Moving forward in criminalizing marital rape globally emphasises the requirement to view marriage as a partnership based on mutual respect and bodily autonomy. Addressing this issue of marital rape in a marital relationships globally requires a balanced approach which incorporates legal reforms and policies, cultural education and victim's advocacy to create societies where all the individuals can live freely from violence, irrespective of their marital relationships[7]. The progress of criminalizing the marital rape is not even but still many nations are commencing to criminalize marital rape.

India's Bearing On Marital Rape: Sec. 375 Ipc And Its Exemptions

India's region on marital rape examines a deep-seated anxiety among socio-cultural customs and custodial or legal frameworks, powering ongoing debates amongst law-makers, jurists, and the society[8]. At the centre of this issue is Sec.375 of the IPC, which summaries rape but controversially excludes non-consensual sexual acts interior marriage, supplied the partner is over 18 years vintage. The exemption, ingrained in colonial-generation legal guidelines

stimulated via Sir Matthew Hale's insights that marital relations are implied permanent consent to sexual members of the family, which correctly decriminalizes marital rape and also upholds patriarchal ideas of perpetual spousal consent[9]. They also point to existing criminal remedies, like the Protection of Women from Domestic Violence Act, as enough for addressing illustrations of marital abuse[10]. However, these arguments fail to cope with the wider implications. It also contradicts India's obligations to international treaties just like the CEDAW, which call for getting rid of all styles of gender-based violence[11].Criticisms of these exemption sheds lights on its risky impact, as it discharges the extreme bodily and mental trauma encouraged by using the usage of marital rape. It additionally replicates a hesitation within the judiciary and legislature to challenge entrenched patriarchal norms. While courts have from time to time puzzled this provision, inclusive of in *Independent Thought v. UOI,2017*[12] wherein the criminalization of non-consensual intercourse with minor better halves become upheld that grownup women continues unprotected. Similarly, the *Justice Verma Committee (2013),* shaped after the *Nirbhaya case*[13], advocated doing away with the exemption[14].

On the worldwide level, India lags behind worldwide places just like the UK, which eradicated the exemption of marital rape in 1991, and America, in which marital rape is a criminal and grievous offense in all states. Nations like Canada and South Africa have escorted gender-neutral rape legal guidelines, warranting same safety for all patients. For India, doing away with this former exemption is only the first step. There is also a need for public recognition campaigns, whole intercourse training, and assist systems to shift societal attitudes and empower the victims. Eliminating the exemption of is greater than a legal reform as it's far a step towards accomplishing gender justice.[15] Explaining marital relations again as a partnership of equals, build on understanding which is mutual and the consent, which is main element for India to uphold and support its requirements and honour its commitments globally[16]. By highlighting the consideration, safety, India can pass in the direction of a more reasonable society[17].

Health and Psychological Impressions of Marital Rape

Marital rape is culturally often ignored, strongly affecting the mental and physical well-being of victims. Survivors or victims will

continuously be in intense psychological trauma that may appear as flashbacks, nightmares, or emotional withdrawal. Cultural socialization time and again leads survivors or victims to blame themselves, making it even dangerous for them to form healthy, trusting relationships. The lack of consent will flourish the risk of sexually transmitted diseases and reproductive complications. Pregnant survivors will face more risks which will incorporate miscarriages and delivery complications which can even impact the health of the child.

Traumatic events to mental illness also aggravate the tragedy. Most of the survivors or victims go for materials to try to wrestle with or come to terms with suicidal thoughts, feeling caged and helpless. Socio-economic dependence on the abuser and stigma mostly present the survivor or victim with little to move out. Young people in this situation suffer also because they come out with big emotional scarring from what they witnessed in violence patterns that end up being transmitted to later generations due to this vicious cycle.

This silence is compounded by the damage of custodial reputation in a few areas, even as monetary and emotional requirement, at the aspect of restricted get entry to to guide services, upholds many trapped in abusive marital relationships. Marital rape calls for urgent, multi-layered motion. There would be legal reforms and standards to criminalize that particular act, accessible critical fitness care, public campaigns to perform risky societal norms, and health systems equipped to provide sensitive, trauma-informed care. And of course, there's economic and education empowerment-the bottom line to make partnership sufferers reclaim their independence and get away from abusive environment. Dealing with marital rape is not an easy pretty awful lot defensive people as it is all about creating a society that values equality, dignity, and respect for all.

Socio-Cultural Blockades to Reporting Cases and Justice Access

The voyage to justice for survivors or victims of marital rape is anxious with annoying conditions deeply entrenched in societal norms, cultural attitudes, and systemic limitations. These barriers regularly silence victims and reject them the help they desperately require. Within marriages, abuse is often normalized as a non-public depend or possibly a marital entitlement, leaving survivors feeling obligated to go through it. The stigma adjoining sexual violence

affords a few special layer of trouble, as survivors are frequently labelled as impure or dishonoured, with circle of relatives' recognition taking priority over their properly-being[18]. Similarly, the cultural taboos surrounding the discussion of sexual abuse enable the silencing of survivors, most of whom are unconscious of the fact that they might have withdrawn their consent from a relationship.

Patriarchal values and gender inequality exacerbate these issues. Women always stand inferior in front of men, especially regarding marriage. This concept disposes them of the self-respect and ensures that their bodies belonged to the husbands. International countries define marital rape to be an insignificant crime or no offense. Survivors or victims, if prison reforms or rules or system do exist, usually face an intimidating, harassing, and compromised judiciary. Protracted trial, or perhaps in corrupt practices, at once because the perpetrators retain their privilege or power over, to deter all victims from attaining justice. Cultural conditioning oftentimes hardens feelings of guilt and disgrace, leaving behind survivors or victims to enjoy the burden of blame for violence that they have suffered. There, too, the youths feel, as if themselves young, deep emotional scars inflicted upon their body as a counter-sign that such abuse breeds cycles of violence.

Cultural contingency, covering malpractices in the cover of culture further restrains growth in reliance on the method of protection of abuse from condemnation. Access to valuable resource inputs is largely avoided in most cases. Counselling, protective shelters, and coffee-price cell resources are crucial for their escape but those resources also appear in short supply for many who would want to escape out of an abusive environment, and such confinement warrants to be tackled on all aspects. Public interest campaigns can support task societal stigma and educate companies roughly the importance of consent and gender equality. Legal reforms and policies need to criminalize marital rape and make sure that regulation implementation and judicial structures are skilled to address times delicately. Engaging community and spiritual leaders to sell gender justice also can assist shift cultural attitudes and dismantle risky norms. This isn't pretty heaps defensive character rights as it's approximately cultivating a society which values dignity, equality, and admire for all[19].

Role of Law Enforcement and Judicial Attitudes: Recommendations For Legal And Social Reforms

Law enforcement and the judiciary are serious in tackling gender-based totally violence, including marital rape, as they shape every survivors' get right of access to justice and broader societal attitudes. Reforming these structures is critical to flouting risky societal norms and developing a fairer, more inclusive society.

For many victims, law enforcement is their first issue of contact, making officials' responses significant in figuring out whether or now not survivors revel in supported in trying to recognize justice or discouraged via the device. Gender biases amongst judges can cause damaging stereotypes approximately survivors' credibility or morality, overshadowing the activities of the culprit. Regions in which marital rape stays unrecognized as a criminal offense, preceding criminal hints prioritize the sanctity of marriage over individual rights, correctly denying justice to survivors[20]. Even in jurisdictions with legal protections, the excessive burden of evidence, drawn-out trials, and shortage of survivor sensitive practices make the way intimidating and stressful. Delays in handing over justice frequently pressure victims to barren region their times altogether.

To overcome these troubles, a complete technique related to legal and social reforms is important. Laws ought to unambiguously criminalize marital rape, redefine consent to address coercion, and streamline legal strategies to make certain victims or survivors can get charge to justice without vain hurdles Equally vital is the need for gender sensitive schooling for regulation enforcement and judicial officers, sanctioning them to understand the intellectual and social complexities of marital rape on the equal time as familiarizing responsibility mechanisms to avoid misconduct or biasness.

Legal reforms need to be supplemented by means of social tasks. Public recognition campaigns can expose volatile myths about marriage and consent, at the same time as entire intercourse education can substitute an information of healthy relationships and gender equality amongst greater younger people. Survivors or victims should additionally have get right of entry to vigorous useful resource structures, together with counselling, shelters, and low-price jail beneficial useful resource, to assist them rebuild their lives[21]. Engaging men and boys in conversations about masculinity

and promoting responsible media insurance can similarly mission societal attitudes and inspire a culture of apprehend. By speaking of systemic shortcomings and reshaping societal perspectives, we are able to create a framework which permits survivors and ensures justice[22]. These adjustments go past punishing perpetrators as they motive to domesticate a society rooted in recognize, dignity, and equality for anybody[23].

Conclusion

Marital rape, therefore requires the multi-dimensional approach to highlight the necessary reforms or policies at all levels, that is, legal, social and cultural. Legal structure should be changed; marital rape must by all means not be include criminal law because the notion of consent in marital relations must actually be based upon a constant principle. Improvement of the protection offered to the survivors without encroaching on their rights to autonomy and dignity can be observed. In this regard, the judicial system should embrace gender-sensitive training programs that make sure cases of this nature are treated with sensitivity and professionalism by the law enforcement and judicial authorities to understand the complexity surrounding marital rape. This improve the removal of the damaging mythologies about marriage and sexual consent to overlay the way for socio-cultural development that will have mutual respect and equality. Recovery support mechanisms for survivors should also include easily available counselling services, proper accommodation, and accessible judicial processes to enable rehabilitation to independence and rebuilding. This will no longer be disregarded or pardoned by people because this nurtures a society which values human rights, validates the principle of equality between men and women, and holds in esteem the dignity of every individual. Acknowledgment and criminalization are among the more important steps in building a just, more balanced, and more humane world community.

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Disability Rights and Realities: A Legal Perspective on Inclusive Education under the RPWD Act

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Abstract

"It is not enough to give handicapped a life. They must be given a life worth living"

-Hellen Keller

The Disability right movement was started and came into the surface in California, USA during 1960s. The emergence of Disability rights movement across globe let the recognition of basic human rights of persons with Disabilities. In India, Finally the rights of persons with disabilities had come up in 1995 after the ratification of an International Instrument. The researcher begins with initially discussing the jurisprudential underpinnings and historical aspects of the disability rights movement in India across the globe. The paper follows a doctrinal methodology. The paper introduces the readers to the background and the conceptual theories such as Critical disability theory, ableism and internalized oppression and resistance theory and global perspectives around it. The studies by various researchers and the report published by NSO(National Statistical Office) in 2021 have shown that despite of the literacy rate being 52.2 percent amongst persons with Disabilities, the rate of enrollment of children with disabilities is drastically less in various states due to the lack of amenities to support their educational needs. The paper concerns with the barriers in Inclusive education with children with disabilities statewise. The paper endeavors to unfold the strengths and lacunas of the RPWD act and discrepancy or irregularities in implementation of the provisions of RPWD act

concerning the educational institutions. Lastly, The researcher has discussed about the role of recent judicial precedents that has contributed to shape disability rights.

Keywords:

Inclusive Education, barriers, disability, primary and secondary education

INTRODUCTION:

The origin of the word Disability is related to Renaissance Period. A famous Artist named Lawerence Stephen Lowry had painted a beautiful painting called "the Cripples" which depicted Four disabled Beggars who had prosthetics and whose faces were deformed.[1] It showed how treatment was distinct and prejudiced for a disabled citizen than an ordinary citizen in the country. With a lot of struggles of human rights activists movement around 1960s, the United Nations finally adopted the Declaration on the Convention on the Rights of Persons with Disabilities (UNCRPD). In India, we often use the word '*Viklang'* for Disability. This word describes the term disability negatively and it was derogatory to PWDs (Persons with Disabilities). Recently, there has been paradigm shift from the word *'Viklang'* to '*Divyangjan'* which means a person with divine body parts.[2] It was announced for the first time by the Prime Minister, Narendra Modi on 3rd December 2015 to put an embargo on the term '*viklang'* for addressing persons with Disabilities (PWDs). [3]According to world Bank, fifteen percent of the world 's population is disabled.[4] According to 2011, census report of India, the population of disabled persons accounts for 2.21 percent of out of the total population in the country.[5] Out of these 2.21 percent of disabled population, 54.6 percent of the PWDs are literate and only 8.5 percent are in Higher Education. Even though there's rise in the overall enrollment of students in Higher Education from 19.4 percent in the year 2010- 2011 to 25.3 percent 2014-2015, the disabled students comprise of less than 1 percent out of these 23.6 percent students[6] It shows that the India is lacking behind in providing inclusive education to the disabled people. This has been pressing issue for decades yet no effective solution has been implemented to curtail the non enrollment of disabled students in Higher education.

Jurisprudential Aspect:

Changing societal norms shapes the disability time to time. The word disability cannot be theorized in a single sentence. The famous Scholar named Kenneth Zola offers a transformatory approach towards disability community as they are also intricate part of the society and mankind. [7]According to him, everyone should be able to get a chance to intertwine and integrate within the social sphere irrespective of their capability or disability. The term disability is being continuously reconceptualized time and again with the shift in the traditional workings of a society.

Disability crosses the line between visibility and invisibility. Any impairment which is visible or it becomes evident from unusual behavior of an individual, is not conforming with normative of the society falls under disability. The perception towards persons with disability is largely derogative and negative. Disability is viewed distinctively through the lens of different cultures. This shapes the definition of disability socially because of the shared beliefs, values, common behavioural Pattern and customs. In India , disability is often linked through sacred textbooks i.e Karma and rebirth.[8] It's very disheartening to hear that persons with Disabilities (PWDs) face societal oppression and stigma even today because of limited support and lack of inclusiveness in the society.

There are two different types of disability models such as medical and social model. The medical body is focused on the bodily impairments rather than sociological or environmental impact that shapes the status of a disabled person. This model has been ruled out in the recent years as now the liability is on the state to bring inclusivity in it's policy making and drafting of legislature to give them a better opportunity in the society. The social model confers the responsibility on the state to be able to provide with better opportunities to persons with disabilities(PWDs). Social model is focused on discussing the sociological impact of the on differently abled community due the marginalization, underrepresentation and oppression continuously faced by this community.

The most common theories of disability are critical disability theory, ableism and internalized oppression resistance theory. The Ableism Theory refers to social structures that value a normative notion of physical and cognitive ability, which in turn streamlines and prejudices those who are not deemed to fit into these standards.[9]

Internalized oppression refers to the internalization of negative societal perceptions that reduce self-esteem. It is not the cause of mistreatment by society but rather the result of prolonged exposure to stigmatizing attitudes and systemic discrimination. [10]

The resistance theory, is the oppositional counter-narrative against ableism and internal oppression. The theory recognizes that marginalized disabled individuals are at the hands of systemic forces, where the structures are being explored against which oppositional mechanisms are generated.[11] Resistance may be both individual and collective, emanating from critical self-reflection and proactive action. Resistance is multifaceted and can range from implicit acts of resistance to overt collective action. These responses allow individuals and groups to counter power imbalances and redefine societal narratives about disability.

Understanding Inclusive Education In India:

India has significantly progressed after LPG (Liberalisation, Privatisation and Globalisation) reforms 1991, the overall GDP of India according to World Bank accounts for 3549.2 Billion US dollars and it comprises of 3.32 percent of Global economy.[12] Despite such a development in the economy, there is no improvement in the inclusive education (IE) especially in Rural areas. Actually, the concept of inclusion in India is restricted to educating all children with disability in general education classes for providing education with non-disabled peers. It disproves compartmentalization of students by learning abilities and it seeks to educate all children in a single group. It was reported in 2011 census that 7.8 million children in India are with disability most of them fail to access or gain basic education due to related infrastructural barriers, untrained teachers, and negative attitude of communities. [13]But unfortunately, various inequality factors persist in the country starting with geographical variations in the distribution of educational facilities and even socio-economic differences in India and therefore, inclusive education is a major issue for Indian system.

Rate of Enrollment of Disabled Students in Education:

The RPwD Act 2016, and the Right to Education Act 2009 is the two laws that support the provision of Inclusive Education in India. It is also the legislation that requires construction of barrier-free environment, provision of education to disabled children, and establishment of personal education plans. Still, the details from

UDISE+ 2020-21 highlight disparities in disabled children's enrollment by states.[14]

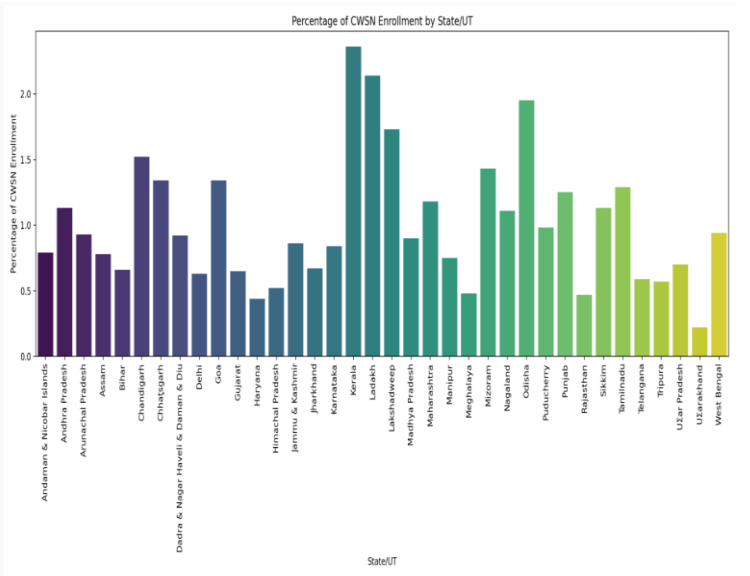
Kerala stands high with 2.362% enrollment levels main reason being effective community Based Awareness Programmes and trained teachers while Bihar reported 0.7% which is due to System constraints like poverty, inadequate infrastructure etc. Some of the states like Tamil Nadu holds 1.29% and Chandigarh 1.52% rates higher degree with teacher training and urban receptive policies. However, states like Madhya Pradesh, which has 0.90% enrollment, and Assam, having 0.8% enrollments, are rather constrained by problems of geographical remoteness and dearth of resource.[15] Nevertheless, only 19% of schools across the country have minimum accessibility features, according to the 2021 National Statistical Office report.[16] This divergence is almost more shocking in rural and tribal geography where other issues such as long distances to school and inadequate availability of special teacher to assist the disabled children also adds to it.

Some of the northeastern states like Manipur with 0.75% per cent adoption and Mizoram with 1.4% have formulated localized policies that have decent achievement but the mountainous terrains pose limitations to broad based enrollment.[17] India can only improve the situation with the help of global initiatives like SDG 4 and UNCRPD, which force the country to regulate inclusive education according to international standards. Nevertheless, some issues remain, specially in terms of the gap between the urban and rural areas. The vulnerability of girls with disability makes them suffer and being ignored by society and discrimination on the bases of their gender these make most of them to drop out of school

Although steps are taken regularly by the government through programmes like the Accessible India Campaign, there are structural barriers, social prejudice, and more importantly, lack of uniform enforcement of laws. For example, Gujarat stands at 0.65% and Maharashtra at 1.18% for urban areas only but the concern is about having poor rural visibility and literacy.[18] To fill these gaps adequate monitoring structures, enhanced funding and clear teacher training interventions for Inclusive Education are essential.

Education in India must embrace inclusion to ensure that social justice for all children is witnessed by promoting diversity for everyone. Thereby making the legal requirements and policies a

good starting point for delivering on women's rights, nevertheless, goals on paper are only as good as the implementation efforts. If infrastructure in this country is improved, awareness created, and barriers that cater for the disadvantaged removed, the spirit of inclusion will ensure that every child throughout India is provided for.



Fig; Total Enrollment of CWSN in class 1- 12 as stated in UDISE+2020-21 data (graph created from Julius AI)[19]

Relevant Provisions Related Inclusive Education

The Rights of Persons with Disabilities Act, 2016 (RPwD Act) marks the land mark legislation in India guaranteeing the inclusive education to persons with disabilities which comply with the domestic laws with international standards such as United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The right to education is recognized in the Act as a fundamental right, which includes accessibility, non discrimination and individualised support for children and persons with disabilities.

The RPwD Act mandates section 16– all educational institutions to deliver inclusive education. It weds schools with the obligation to award admission with out discrimination, to apply for suitable infrastructure and make such needed accommodations, including the usage of increase expertise and individualized

educational plans (IEPs).[20] Section 31[21] consolidates the constitutional right under Article 21A that is further ensured to every children with disability to right to free and compulsory education within the period 6 to 18 years in proper settings. The Act has the force of Article 14[22] of the Constitution which guarantees that persons with disabilities are not discriminated against in accessing education. Similar to this, Article 15[23] forbids discrimination on many grounds, including disability and mandates preferential measures for specially disadvantaged groups.

International commitment of Article 24 of the UNCRPD to ensure access to an inclusive and quality education system is reflected in the RPwD Act emphasis on inclusive education.[24] It is consistent with Sustainable Development Goal (SDG)4, a campaign for an inclusive and equitable quality education adapted globally, and in that regard, it stands out.

Why Are There Challenges in Implementing Inclusive Education Across These States?

Indian systemic deficiencies and infrastructures make different conditions that significantly hinder inclusive schooling for a person with handicap. Documented below though the overall policy is developed in favor of it including RPwD, facts on the ground express adequate deficiency on the subjects for the practical implementation in society.[25] A set of overall barrier infrastructural, educational resource in handling the problem, developing social awareness all these acts serve as major barriers against such desired inclusiveness.[26]

A major issue is the physical accessibility deficit in schools. Among those states, Bihar, Jharkhand, and Odisha follow at the very low rates.[27] For example, while Kerala leads in creating accessible learning environments, states such as Uttar Pradesh and Rajasthan lag due to resources and lack of prioritization. For addressing this issue, policymakers needed to allocate targeted budgets for infrastructure development, coupled with rigorous monitoring mechanisms to ensure compliance with accessibility norms.[28]

Another significant limitation lies in the lack of proper teacher training. Most teachers are not enough training to equipped to handle inclusive classrooms appropriately. There seems to be a less number of instructions given on inclusive pedagogy on which educators are formally provided. The result is not an adequate response to varied

needs of children with disabilities (CWDs). Tamil Nadu and Maharashtra have initiated focused programs for teachers, but these remain underimplemented.[29]

Nationwide, there is a vast need to integrate inclusive education into the teacher training and frequently hold workshops to build proficiency. Curriculum design and learning materials also poses present a challenge. Textbooks and resources are rarely adapted for students with disabilities, particularly those with visual or hearing impairments. While Gujarat has introduced assistive technologies in some schools, such efforts remain fragmented and fail to reach the majority of children. A solution lies in developing universally designed learning materials, leveraging technology to create Braille and audio formats, and ensuring their widespread distribution. Social stigma, in addition to attitudinal barriers, heightens the problems associated with infrastructure and pedagogy.[30] Disabled students are often victimized stigitised and ostracized, especially in rural and disadvantaged areas. The report indicates that states like Assam and Chhattisgarh have higher dropout rates of disabled students due to deeply inherent social prejudices. For addressing this problem, there is a need for massive awareness programs for both parents and teachers, which would create an environment of acceptance and inclusion. Community-based interventions, such as those initiated in northeastern states like Mizoram, can serve as a model to reduce stigma and encourage enrollment.[31]

Lastly, the implementation suffers from inconsistencies and weak enforcement. Even though the *Samagra Shiksha Abhiyan* is aimed at consolidation of inclusive education initiatives, their overall reach and impact still remain uneven across states. Proper governance will involve a dedicated monitoring body, collection of disaggregated data on enrollment and retention rates, and periodic assessments of impact to modify strategies accordingly.[32]

Importance of Judicial Pronouncement:

Indian judiciary has paid great attention to the development of the legal structure in relation to disabilities, especially within the realm of inclusive education. A landmark judgment pertinent to the case is ***Vikash Kumar v. Union Public Service Commission (2021),[33]*** in which the Supreme Court reiterated the principle of reasonable accommodation as envisaged under the Rights of Persons

with Disabilities (RPwD) Act, 2016. Here, it was the case where the candidate, who happened to have a disability, was being denied the facility of a scribe while appearing for a public service examination. The Court found the above denial discriminatory and in violation of the RPwD Act that has prescribed equal opportunities to persons with disabilities. The judgment made emphasis upon creating just conditions for the disabled persons and ruled that appropriate accommodation is also important to bring substantive equality.

Another significant judgment, ***State of Kerala v. Leesamma Joseph (2021),***[34] addressed the broader issue of disability rights in public employment. The Supreme Court ruled for the handicapped candidate, who was denied the civil judge post because of her disability. It emphasized that such a decision was against the fundamental rights of equality and non-discrimination guaranteed under Articles 14 and 21 and in conflict with the provisions of the RPwD Act that guarantees equal employment opportunities. Beyond the matter of validation on entitlement to dignity and equality by a petitioner, this ruling reaffirmed the state's obligation to promote inclusivity in public employment.

For example, in the case of ***Disabled Rights Group v. Union of India*** **(2017),**[35] the Delhi High Court extended accessibility and inclusivity to public infrastructure, which in particular is relevant to achieve inclusive education. The Court ordered that the government provide accessibility to public buildings, transportation systems, and facilities for persons with disabilities in line with the provisions of the RPwD Act. The judgment primarily focused on physical access; however, the implications were broad and cut across all sectors to embrace disabled persons into mainstream education environments and other public spaces. As observed by the court, inaccessible infrastructures themselves pose some insurmountable barriers in the way of achieving basic rights for persons with disabilities.

The Supreme Court held in ***Union of India & Anr v. National Federation of the Blind*** **(2013)**[36] was one case that helped the court defend and uphold the reservation policies adopted towards people with disabilities as adopted by the Persons with Disabilities Act, 1995, and then by RPwD Act, 2016. The High Court directed the government to introduce a 3% quota of people with disabilities in government jobs and educational institutions across the country. This judgment recognized the importance of affirmative action in

empowering the disabled to participate equally in society. The decision by the Court for strict implementation of these provisions marked a significant step forward in filling the gap between law and practice.

In ***Avni Prakash v. National Testing Agency (2021)[37],*** the Delhi High Court addressed the issue of reasonable accommodations during competitive examinations. The petitioner is an applicant with disability and faced difficulties during an examination conducted by the National Testing Agency. The Court directed the NTA to provide scribes, extended time and accessible testing locations - accommodations this court held should be devised with every candidate's needs under consideration. Such an opinion established the principle of reasonable accommodations as a tool for inclusive education and afforded no undue disadvantage to persons with disabilities. In a nutshell, these decisions as a whole portray the judiciary's expansive initiative in protecting the rights of people with disabilities. The discussion on reasonable accommodation, accessibility, and the use of inclusive policy by courts has formed a robust foundation for inclusive education and employment in India. These decisions depict an all-round commitment towards protecting the principles of equality, dignity, and non-discrimination as enshrined within the Indian Constitution and adopted globally through international treaties such as the UN Convention on the Rights of Persons with Disabilities (UNCRPD). In that way, the judicial system succeeded in furthering the advocacy process for disability rights simultaneously with its appeal for radical reforms in pursuit of an inclusive society.

Conclusion:

The process of gaining inclusive education for people with disabilities in India has been laborious but transformative. The Rights of Persons with Disabilities Act, 2016 (RPwD Act), which is based on the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), is a universal internaternational Instrument that strengthens the rights of persons with disabilities to participate fully and on an equal basis in all aspects of life. This is interesting because such legislation has altered the discourse from charity or medical models to rights, based on dignity, equality, and accessibility, yet its implementation reveals the enormous gaps between legal preconditions and reality.

Judicial pronouncements have thus far been instrumental in bridging the gap by interpreting and enforcing the provisions of the RPwD Act, thereby bringing them in line with constitutional principles**.**

In summary, while the RPwD Act has created a robust legal structure for disability rights and inclusive education, it remains dependent on the collaborative efforts of the legislature, judiciary, government, and society to become effective. Only by translating legal provisions into effective practices can India ensure that rights for persons with disabilities are not merely theoretical but practically implemented, thereby upholding its constitutional and international commitment to equality and human dignity.

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A Comparative Analysis of Laws on Arms: A Study of Regulatory Framework in India and the United States

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Abstract

This paper focuses and provides comparison of gun policies in India and the United States reveals significant differences in laws governing gun control, licensing procedures and the types of firearms allowed. India's gun regulation is deeply influenced by its colonial history. The Arms Act of 1959, which governs the possession, acquisition, and use of firearms, has roots in British colonial rule. After the 1857 uprising, the British imposed strict restrictions on firearms for Indians, aiming to prevent uprisings and ensure control. This led to the enactment of the Arms Act of 1878, which heavily regulated gun ownership, a legacy that persisted into India's post-independence laws. In India today, gun ownership is tightly controlled, requiring individuals to obtain a government license, and the types of firearms available for civilian use are limited. In contrast, the U.S. Constitution's Second Amendment guarantees the right to bear arms, making gun ownership widely accessible and deeply embedded in American culture. The cultural differences between the two countries also influence their respective gun laws. In India, widespread misuse of firearms in regions like Uttar Pradesh and Jharkhand has led to increasing violence, particularly political killings, demonstrating the failure of existing gun control policies. The paper also addresses India's position on the Arms Trade Treaty and its broader stance on international arms

trade, considering its defense and security concerns. In this paper, the essay provides a thorough comparison of gun policies in India and the U.S., examining how these laws impact public safety, political violence, and national security.

Keywords: United, Violence, Gun control, America, United states, Arms act, Political, Government, License.

Introduction

Looking at our contemporary world what we find is that in our today's society we live in use of arms and weapons since the genesis in 17th century of various sectors getting completely dependent on machine's and since then most of the works started to occur in industries among the various sectors on of the key sectors which saw its flourishment under the English empire and Portuguese where the sectors of arms and ammunition started growing under these ambit comes the picture how one nation with more such resources progressed and ruled over other like the ones who governed various country was united kingdom who predominately brought laws and acts further on to govern and regulate the flow of arms in their territory[1].various defense measures and regulations we will be looking at which were too crucial from the point of environmental aspect where in such cases laws were brought in like hunting or poaching laws and regulation and types of gun used for such purposes were made.[2]. Governments usually prohibit people from accessing firearms because they bear the responsibility of securing the territory they control[3].There are countries in the world which do support the control measures to suppress any such king of intolerance or disturbance which can be easily caused into mass killing into a country examples for that are usa and Pakistan where we find stricter law on the issues of gun control and the various measures taken to stop such incident of terrorism and destruction yet they have not achieved their epitaxy in the same.[4] Looking in the Indian context it the sepoy mutiny which led to the laws made on gun and stricter imposition and regulatory framework were introduced by the britishers for the Indian subcontinent to regulate the holding of any arms in their personal capacity. In Indian context the law which governs the people of the land is the arms act of 1959 which was framed on the basis or the layering was done on the act of arms act 1877.the 1877 arms act in India provided royalty licensing for fewer sections of people who lived in India and was well

regulated and discriminatory too. The paper goes in depth on various regulation and the currents trends on weapon use their export and import ratio of both United States and India and the legal approach in different context of their daily cultural life. The introduction talks about the issue of controlled gun ownership in India and connects it to political procedures. It stresses the problem of such policies not being active enough and explains the central principles of the Indian regulation of gun possession. The paper attempts to describe the evolution of various gun control measures in India over various, largest gun ownership in the whole world.

Question for Research:

1. What are the constitutional and statutory bases of gun regulations in India and the United States?
2. What steps do the legal systems of each country take to balance individual rights with public safety concerns on firearms?
3. What are the primary differences in the gun regulatory approaches between these two countries?
4. What are the implications of these legal structures on gun violence, public safety, and individual freedoms?

Scope on the Trend of Skepticism of the Right to Bear Arms

The two along with the Ninth has gradually been subjected to scrutiny since the emergence of the legal battles related to gun regulation after the adoption of the Second Amendment.[5] The Second Amendment that flowed from America's colonial genre particularly the militias also became a very controversial issue after the Heller v District of Columbia where the right of self defense, which includes owing firearms was decided constitutional[6]. The argument lies in the way the Second Amendment is perceived; sustaining a pro-gun and an anti-gun faction suggests that gun ownership is a pre-civilization issue and law in itself. The 'commercialization' of the AR-15 rifle has propelled the gun control debate in insupportable limits, and due to the number of occurrences, fatal and non-fatal, in mass shootings and the complexities and plurality of gun control issue in the society[7].

Lobbying of the National Rifle Association (NRA)

The NRA is very active in the lobbying against laws limiting gun control, finding financiers and disseminating the idea that more gun’s, includes a variety of domestically manufactured, and imported arms, and notes that recent arms trade is primarily

composed of parts and services rather than complete systems[8]. Besides, it focuses on the increasing involvement of countries other than the high-income nations in the production of nuclear weapons thereby changing the global target arms policy[9]. The paper studies the patterns of social interaction and their effects on individual actions in multiple settings. The paper addresses the issues of how the social context may affect the decision-making process. The writer give a more careful overview of the analyzed studies with a thorough discussion of theories and models of social behavior in particular. Their analysis is supported by data, which has enabled them to establish the association between the society and the choice of an individual[10]. The results show that social variables significantly affect behavioral practices, therefore, indicating that there is indeed a cross-disciplinary interplay between psychology, sociology, and behavioral economics towards understanding the dynamics of social interactions. Finally, the paper ends with a call for further work in order to be able to understand these dynamics and their use in practice even more. The paper studies in depth the India's importing behavior of arms making paradigm shift from the Cold War relationship with the Soviet Union sources of arm procurement of late years. In recent times, India has been one of the greatest arms importers worldwide in a pursuit to strengthen its domestic base, emerging as a strategic player as well as an important actor of global stature. Resolves the conflicts on defense trade Russia-India as well as USA-India relations, issues and export controls as well as dependency from supplies originating from foreign lands. Emphasis has been put by India through indigenous arms production along with search for alternative suppliers including the building of multilateral relations in order to make less the dependency that emerges through the inflow of arms. In here the main pattern of the same has been tried to be identified where we can find that how and what is the pattern through which the supply and Indian arm purchase strategies are made in such conditions. Paper also examines about the right approach and what is the nexus in the pattern of gun supply in the Indian gun manufacturing and export sector which we find that the export in the f arms are not to that extent as in comparison to the import ratio. The Supreme Court decision on guns have really made it shown and spurred political arguments over the arms. It explains and particularly to the topic of gundamentalism

which too has taken into account the right to espouse and advocate for a full blown second amendments for self protection under the same is considered important in it and pertaining to be gunned down[11]. According to particularly Lowy and Sampson, the right to life should be more instilled to the populace than the individual right to gun ownership. The focus also shifts on the issues of race and how the under the same we find use of short hand guns being used to subjectively against a ethic and racial group.[12] The major identification on the future shift of how the gun market is regulated too has been discussed and the various variants of gun used for different purpose in the same and oozing the usa and Indian aspect in the context how long range rifles have been subjected to different the paper which also discuss how Russia is one of the major arms exporter of AK 47 to both of the nation irrespective of their production of arms.. USA[13].The multilateral pattern of arms trade is also different in both of the countries and one follows the arms act of 1956 whereas on the other side its different federal laws The question of the national aspect and the major interest which too has been taken under the attention bestowed under the federal and what is the future shift of attention in both of the countries and business and the protection dimensions with gun and foreign policy under it.[14] The focus also goes on what are the major ATT regulations under the same ambit where we find cause there is nothing like an umbrella Like structure under the overall governed on export and import of different weapons and which weapons are applied for the civilian police use in both of the countries there in such case we find that law mainly focuses on the capitalist side rather than the socialist aspect. Tracing the history of development of EPZ policies, it examines the export performance trends analysis from the inception stage. It must be added that the high demand from the potential investors is clearly stated, and there is no comprehensive assessment in such terms. The final section takes the form of policy advice for the target EPZs/SEZs in an attempt to holistically reform them, pronouncing that addressing policy linkages in more depth and keeping biomechanics in check is paramount Each paper adopts this perspective in understanding the context of the research this paper attempts to develop top explanations[15].

How the distribution of guns and arms takes place and what are the rules regarding aspect which comes to hunting and poaching

and their riding effect on the control and gun and their policy and about the customary practices which are there in India where some community prefer the idea of practicing gun control min their own way and those customs do hold importance in the ways and is of the riding effect whereas in usa,[16] there are some aboriginal people who do prefer their own customs and as per the congress the law passed which is federal ion nature the aboriginal people and the doctrine in which it is believed that as per the customary law and their system and the practices which other factors which are also on the licensing aspect of the gun in both of the country where we do find that in usa it more of a political biased whereas in India its more of the impact which has been marked on the Indian subcontinent as been subjected and been under British colonial rule for more than over 200 years. In the united states we find that it is more of a political dispute where we find that in the topic of gun and ammunition on hand there is republican party who is an avid supporter and supports the idea of each person has the right to carry and hold gun as their right guaranteed by the statutory and federal laws under the us laws made. whereas looking on the other side of the coin we find that the democratic party which is more sort of central conservationist party of the united states supports the idea that it is very important that the gun laws should be made more affirm and strict and considering this conflicting point of view we have also come across instances where one ruling party has put their ideology onto the common citizen on this regard's.

Qualitative Approach Between Usa and India

This study uses a qualitative, comparative approach to the examination of the laws controlling firearms in India and in the United States. The research would rely on the qualitative analysis of primary legal documents, that is, the Arms Act 1959 and relevant U.S. Supreme Court cases, supported by secondary sources like articles from academic journals, reports, and policy papers. Techniques for information gathering: Analysis of the Arms Act 1959 and other laws in India related to the same, along with legal comments on authorization and possession of firearms. Important decisions of the U.S. Supreme Court, such as District of Columbia v. Heller and McDonald v. Chicago, with constitutional explanations of the Second Amendment. Analysis of secondary sources, which includes published journal articles, books and policy documents

related to firearms control in both countries.[17] Data analysis techniques: A comparative study will be involved, analyzing the legal regulations and their comparison in India and the U.S. by spotting the differences and similarities between these two countries' regulatory approaches[18]. The review will also involve assessing the interpretation by the courts and how the court orders have impacted public safety and personal liberty.

Gun Used for Hunting in Usa and India.

Hunting, a mortal pursuit that is as old as Mankind itself, still very much is a part of mainstream culture but with numerous shades depending upon geographical position, laws, and original customary practices. Both India and the United States have traditions of hunting but the weapons utilised in these countries differ dependant on legal restrictions of what kind of game hunting is possible, the type of game, and the practice of stalking. Hunting in India Hunting in India is as old as the legends are, traditionally associated with majesty and racial communities. Nevertheless, in modern times, stalking is highly regulated because of the country's sweats on conservation and strict wildlife protection laws. Legal Landscape The primary enactment governing stalking in India is the Wildlife Protection Act of 1972, which outlaws the stalking of utmost brutes, especially those categorized under risked or vulnerable ones. The Act also has outlawed the use of certain arms for stalking purposes. In some regions and for specific purposes like pest control, wildlife operation, or during specific times of time, stalking may still be legal with authorization. Whereas India's government strictly controls the usage of gun power, hunting for the specific game brutes of pastoral areas, such as Nilgai (Blue Bull) and certain types of deer, is still rehearsed under regulated conditions. However, certified hunters in India generally use shotguns and rifles that are both crucial and versatile for different kinds of wildlife. Common bones include 12-drag shotguns for stalking snorts and.22 LR rifles for low game like hares or rabbits[19].

Arms for Hunting Shotguns The 12- drag shotgun is one of the most generally used arms in India for hunting low game and raspberries. Shotguns have a smooth drag and fire a spread of pellets, which make it apt for shooting presto- moving targets similar as raspberries or small mammals. Some of the most widely used shotgun brands in India include the Italian manufacturers similar as

Beretta and Benelli, in addition to the original brands. For bigger creatures similar as deer, wild boar, and Nilgai, Indian hunters count on bolt- action rifles, which fall under classes like.303 British,.30-06, or 7.62 mm. These are suitable for long- range shots and are relatively fragile. The.303 Enfield was the standard-issue rifle to the British Indian Army, and it still is very much in use for stalking, purely for its reliability and the fact that power is redundant. Air Rifles For smaller pests or smaller game, air rifles-(such as typically.177 or.22 caliber) are very popular, to say the least. These arms are a bit quieter and much easier to manage, and for tightly controlled or limited-volume stalking, are favorites[20]. Other Arms Some professional hunters would still employ double- barreled rifles, which they could use on bigger game. Those artillery are more expensive, and are mostly custom-built for professional hunters or serious wildlife conservation efforts, like operations to control the numbers of beasts. In India, ethical stalking is highly encouraged and many hunters focus on game operation or conservation effort[21]. Some indeed share in" game safaris," where the main ideal is to control invasive species, though jewel stalking is largely controversial and heavily regulated. Hunting in the USA The United States has a deep- verified culture of stalking, with arms being a significant part of American life, both for sport and food. Compared to India, the United States stands in stark disagreement when it comes to stalking regulations and the variety of arms to use in stalking. Hunting Laws of the United States The USA is governed by a blend of civil, state, and original laws that oversee stalking. Where the utmost civil laws regulate the stalking effort on public land and ensure the safety of exposed species, the maximum stalking laws are imposed at the state level[22]. This is different in rules from colorable countries in forms of games that can be hunted, hunting seasons, and the arms to be used for stalking. American hunters average out a great amount of arms available for purposes. Legal practice provides emphasis on safe and ethical stalking practice. It requires a person to take courses, gets certified, and adheres to some specific game regulation. Hunting in the United States often revolves around the following large game similar as deer, elk, wild boar, and even bear, which is not particularly so in India's focus on lower game and jeer stalking. Arms for Hunting Shotguns As in India, shotguns are used in the U.S. for jeer stalking and small game.

However, shotguns in the U.S. are more diversified in design and come in various needles similar to 12- hand, 20- hand, and 10- hand. Shotguns in the U.S. are always used for waterfowl, upland raspberries (like pheasant and beef), and small mammals. The most popular brands include Remington, Mossberg, and Browning. Rifles In the U.S., rifles are used vastly for hunting larger game analogous as deer, elk and moose. The most popular classes for hunting in the U.S. are.308 Winchester,.30- 06 Springfield,.223 Remington (for lower game), and the larger magnum classes like.300 Winchester Magnum for big game. Bolt- action rifles such as the Remington 700 and the Winchester Model 70 are among the most widely used, though semi-automatic and switch- action rifles are also popular. AR- 15 Rifles In recent years, the AR- 15 platform (protected generally in.223 Remington or 5.56 mm NATO) has become popular in the U.S. for stalking, particularly for varmint stalking. The modularity and stiffness of the AR- 15 make it a fave of hunters who appreciate customization and versatility. Handguns and Muzzleloaders While less common to use for stalking, handguns hidden in classes like.357 Magnum and.44 Magnum are employed, substantially in countries like Alaska to stalk bears. Muzzleloader stalking is also an integral part of the American stalking tradition, with certain seasons devoted to black cream stalking. Crossbows and confounding Bows Although archery is not an arm, it is another preferred system for stalking in the U.S. many nations have specific seasons for bowhunting,[23] and this is the favorite system amongst hunters who will prefer a more hard work and olden approach towards stalking. Hunting Culture and Trends The stalking culture within the U.S. runs deep in the history of the country, where it's considered both a custom and a system of conducting wildlife operations. The wide vacuity of arms and the broad variety of hunting openings have made the U.S. one of the top countries in terms of huntsman participation. This focus on rights and conservation has further resulted in substantial investments in wildlife protection and niche operation.

Conclusion

India and the United States each have special systems to control weapons, which have been formulated according to their individual legal history, past incidents, and social beliefs. While India is strict about public safety and the reduction of violence

through such an approach, in the United States, emphasis is given to individual rights and freedom, which could result in public safety problems. International recognition of the United States arises from legal recognition given to a person's right to hold a firearm. Gun ownership is legalized, and guns are considered an integral part of American culture, especially in rural and southern regions[24]. However, with recent mass shootings, debates concerning gun control have been increasingly relevant. Some people argue that gun violence would be less prevalent by imposing stricter restrictions such as banning assault rifles and subjecting everyone to background checks prior to buying any weapon. Others, on the contrary, point to the necessity to defend oneself and to maintain constitutional rights based on the Second Amendment.

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Surrogacy in India: A Path to Empowerment for Surrogate Mothers and Greater Inclusivity

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Abstract:

Surrogacy refers to a medium of assisted reproductive technology which provides intending parents with the benefits of giving birth through "unconventional methods". Legislature aimed to regulate this medical practice by enforcing the Surrogacy (Regulation) Act, 2021[1].

This Act aimed at striking a balance between all the stakeholders involved in this process. This legislature paid lip service to the rights of surrogate mothers. Their position as a party to this practice has been completely undermined and no rights are guaranteed for them. Commercial surrogacy is an ever growing concern in India especially when there has been a ban on commercial surrogacy and this Act advocates solely for altruistic surrogacy. In comparison to other developed countries, India has a high maternal mortality rate and surrogacy is aggravating this issue. This is a catch 22 situation for women. This paper discusses rights of surrogate mothers in the context of surrogacy in India. In addition to surrogacy being "completely" regulated in India with only authorised clinics possessing rights to authenticate surrogacy. There needs to be provision ensuring fundamental rights for surrogate mothers in India. It's extremely difficult to predict whether surrogate mothers in India are opting for surrogacy due to autonomy or are they doing it under societal pressure of earning money for their families. The Researcher attempts to explain that surrogacy is not a

moral or immoral topic; rather the situation of every woman and her household leads to her decision of opting for surrogacy. A woman's body considering its reproductive capacity acts as a merchandise with enhanced value and this makes the world think that this facility is available and is open to commercialisation on a lucrative market.

Keywords: surrogacy , surrogate mother, vulnerable

Introduction

The right of a woman to make choice in relation to her bodily autonomy is well within the purview of Article 21 of the Indian Constitution[2]. The right of a woman to either procreate or to abstain from procreating is her choice. Any woman's right to bodily integrity, autonomy and dignity must be respected. This was held in the case of Suchita Srivastava v. Chandigarh Administration, 2009 INSC 1086[3]. The ability to bear a child and procreate is a privilege for many. Two individuals, in a wedlock form a family and this in turn gets complete when they give birth to a child. Unfortunately, this privilege of nature is not evenly distributed.[4] WHO has stated that 8-10 per cent couples worldwide suffer from infertility and the incident rate varies around the world.[5] The World Health Organization has also recognised infertility as a public health issue[6], this is due to multiple underlying factors such as lifestyle, genetic factors, uterine, immunological, anatomical factors etc. A couple not being able to give birth to a child is their personal concern but they often face social stigma from society. The ideal concept of womanhood only revolves around a woman who is fertile, heterosexual and a married woman. Women who are infertile and couples who can't bear a child have no place in the society, but women have to bear the brunt of it because of their social status in the society. Assisted reproductive technology (ART) helps women and couples in giving birth and completing their family. This includes In Vitro Fertilization (IVF), frozen embryos, surrogacy or gestational surrogacy. The governmental supervision of ART varies from country to country. Some countries have allowed full access to these technologies, others have restricted these practices partially and others have restricted them completely. The Legislature enacted The Assisted Reproductive Technology (Regulation) Act, 2021[7] for the regulation and supervision of assisted reproductive technology clinics and assisted reproductive technology banks in India. The Surrogacy (Regulation) Act, 2021 has great significance in India as

India acts as a harbour for foreign intended couples, and India is often termed as the 'surrogacy capital of the world'[8]. Surrogacy refers to a medical practice often backed by legal agreement wherein the surrogate mother consents to give birth to a child for the intending couple by the process of gestational surrogacy. Gestational surrogacy is a process where a surrogate mother carries and gives birth to a baby for another couple, also called the intending couple. Surrogate mothers are criticised for their choices this is due to the excessive stigma around this medical practice. India serves as a popular destination for surrogacy. Many foreign intended couples are unable to give birth to a child and for this purpose they come to India for surrogacy because of its affordable rates.

This paper aims to analyse anecdotes of surrogate mothers who were instantly separated from the child of the intended couple for they do not have any rights whatsoever over the child. It is often said surrogacy and other assisted reproductive technologies promote bodily autonomy and dignity of women but they in fact perpetuate and preserve patriarchal standards of women and they limit surrogate mothers as 'procreative machines' and 'womb for rent'.

Historical purview of surrogacy in India

The industry of commercial surrogacy was burgeoning in early 2000s and this practice was carried out without any strict intervention from the Government of India, there was no statutory body or law to regulate this medical practice of commercial surrogacy of India. There were several instances of malpractice and cases of exploitation in the field of surrogacy, this is when the Government intervened and The Indian Council for Medical Research (ICMR) formulated certain guidelines in 2005. These guidelines however did not have any strict backing and the surrogacy industry remained out of the statutory radar. In the case of Baby Manji Yamda v. Union of India the Apex Court decided on the case of the custody of Baby Manji born to a surrogate mother in Anand, Gujarat. The issue was regarding travel documents of Baby Manji who was born to Japanese parents through commercial surrogacy in Gujarat. The Supreme Court hadn't said anything on commercial surrogacy but after this case they made an observation of commercial surrogacy being legal in India. During the same timing The Assisted Reproductive Technology (Regulation) Bill, 2008 was formulated. However this bill couldn't see the light of day

and wasn't tabled before Parliament. The Law commission in its 228th Report (2009) raised the issue of surrogacy not having an adequate and apposite legislation in India which resulted in exploitation of vulnerable women in rural India. Post looking at all the recommendations of the Law Commission, a well drafted legislation, The Assisted Reproductive Technology (Regulation) Bill, 2014. This bill also met with the same fate as the bill drafted in 2008. The Surrogacy (Regulation) Act, 2021[9] was formed before which the 2016 bill was conceived. There have been several noteworthy amendments and changes from 2016 to 2021. Prohibition of commercial surrogacy is one of the major changes brought in the new Act. Foreign couples can not avail surrogacy from India, this practice too is prohibited by law. Another peculiar fact about this is that surrogacy has been restricted to married couples only, single persons, homosexual couples and those in a live-in relationship can not avail the benefits of surrogacy. This Act is outrightly non inclusive in nature, it sets aside the rights given to citizens under Article 14 of the Indian Constitution[10]. Right to equality enshrined under Article 14 of the Indian Constitution is completely dismissed in relation to this Act. The objective behind manifestation of this Act was to condemn unethical practices against vulnerable women in India but this Act seems to violate rights of people who do not come under the ambit of "traditional marriages". This includes homosexual couples, single persons and those living in a live-in relationship. This suggests that certain provisions from this Act can not stand the test of constitutional validity. Along with issues mentioned above, one of them is that the term 'close relative' has not been defined in this Act. Since, the word 'close relatives' has not been defined it becomes extremely difficult for a couple to be a surrogate mother. The term close relative should include family and friends both, this will expand the horizon for a couple to select a surrogate mother from.

Financial autonomy for surrogate mothers in India

In December 2023, the Delhi High Court in reply to a plea indicated that surrogacy should not be encouraged in India.[11] Several aspects of this industry goes unchecked, there exist villages wherein people take up being surrogate mothers as their sole occupation and they are the sole breadwinners for their family. Andrea Dworkin in one of her essays published in the year 1983 warned about

commercial surrogacy spreading to poorer countries, since more women would be willing to willingly do it for a lower cost and with minimum government intervention. Financial autonomy of surrogate mothers in India is influenced by multiple fundamental reasons, these include legal, socio-economic factors. The most vital underlying factor is the surrogacy industry itself. Surrogate mothers get paid in lakhs for foreign couples. A field survey was conducted by Amrita Pande in the city of Anand in Gujarat. Surrogate mothers from income accrued from commercial surrogacy were able to send their children especially girl child to pursue education and sometimes higher education.[12] It is extremely undemanding to neglect a surrogate mothers opinions as they tend to say nothing and they do not respond in any manner to exploitation they face as long as they are well paid. This acts as an easy pathway for financially well intending couples to exploit vulnerable women and let them stay in this vicious cycle of exploitation. Foreign couples chose India as their destination for surrogacy because of its relatively lower costs and easy availability of surrogate mothers primarily due to their economic and social status.[13] The Surrogacy (Regulation) Act, 2021[14] strived for elimination of economic exploitation of women by eradicating commercial surrogacy and encouraging altruistic surrogacy but this raised more doubts and concerns over the economic empowerment of surrogate mothers. Surrogate mothers face several financial hardships. A report on the bill concerning surrogate women was published by the Government in which they pointed out that poor women should be given proper and adequate education and should be informed that surrogacy should not be the woman's last option additionally it is not viable as well.[15] Surrogate mothers in poor countries, especially women, are known to have little to no education. This implies uneducated women are left with less bargaining power. [16]Surrogate mothers often belong to rural areas and they oftentimes can neither write nor understand English, so in case there exists any sort of falsified fact or clause in the contract, they can not sue the medical clinic or intended couple. All women must have education, employment and the mental capacity to participate in political discussions. Secondary education will empower themselves, let alone their families. There exists gender inequality and it affects women more since they are not able to bridge that gap due to lack of social protection for them. [17]Amrita

Pande (2010) notes that remuneration incurred from one surrogacy is equivalent to 5 years of income for poor women in India. [18]The amount seems marginal to people belonging to the upper strata but the amount they receive will exponentially aid them in educating their children, paying loans or buying a house. Surrogacy benefits poor women and their households exponentially, reports state that surrogate mothers earn in between Rs. 2 lakh to Rs. 4 lakh per pregnancy and this is life changing for their household. [19]There are reports indicating that some women's financial condition does not get better but they slip deeper into this vicious cycle. This is owing to the fact that women who become surrogate mothers have no rights and their physical as well as mental health is not cared for after they've given birth to the child. There exist multiple issues surrounding the proportionality of what surrogate mothers are made to go through with how much they are paid and The Surrogacy (Regulation) Act, 2021[20] does not address rights of surrogate mothers intricately. Surrogacy may provide women with temporary financial relief but systemic issues such as health risks, inadequate compensation pose a threat to their bodily autonomy. A study published Suryanaryanan (2023)by concluded that

"*The poorest remained in abject poverty, while the "not so poor" households became richer post-surrogacy. The "very poor" benefited financially only if they repeated surrogacy. The "very poor" suffered near death experiences and serious health problems. Several women went into surrogacy or had to repeat surrogacy to repay household loans. The loans by "poor" and "very poor" households had increased post-surrogacy. The number of surrogacies was higher among the "poor".*[21]

Surrogate mothers may or may not get impacted economically but all of them go through emotional distress either during or post surrogacy. Surrogacy must not be considered another means of labour.

Emotional well being of surrogacy on surrogate mothers

Determining the mental state of surrogate mothers is a multifaceted approach as this medical process contains several psychological factors throughout. Studies show that surrogacy offers a positive impact on women but they also have emotional challenges attached to them.

Some positive aspects of emotional well being of surrogate mothers include, long term psychological health, a longitudinal study was conducted by researchers in 2014, the main results of this study was that 10 years post giving birth to the surrogate child, surrogate mothers did not show any signs of depression which is usually measured as per the Beck Depression Inventory. Marital status of the surrogate mother remained unimpaired. Many surrogates reported that their status with the intended parents was either exceeded or it had been had. They also reported a positive viewpoint towards the child. Many surrogates were of the opinion that they would choose to be in contact with the child and if the child wishes to get in touch with them in the following years, they would meet them. All surrogate mothers were fully aware and confident of their choices. [22]However, there exists a limitation in this paper. Only 20 surrogate mothers were studied, in a small geographical location. These findings do not apply to surrogate mothers in India because in India, mostly vulnerable women opt for surrogacy. They look at it as a form of labor and occupation. Studies revealed that surrogates have higher levels of depression in comparison to expecting mothers, during pregnancy and post-birth. There are multiple underlying factors for this like hiding pregnancy from their relatives, little to no assistance from their families during pregnancy, criticism from the society. [23]These reasons contribute to and accelerate their depression and deteriorate their mental health further. Surrogate mothers tend to focus more on their physical health, consume nutritious food during pregnancy. This is owing to the fact that they are bound by the contract and intended parents would want the best for their unborn child. Their child mustn't face any complications and should be born without any hassles. Surrogate mothers especially in India are recruited by word of mouth. [24]

They are timid, solicitous and nurturing in nature. Therefore, they are trained to be "mothers". Even though The Surrogacy (Regulation) Act, 2021 mandates the surrogate mother to have a child of her own, in India there exist villages wherein this medical practice is unregulated. In India, women connect giving birth with blood ties and a sacred relationship. In western countries, surrogates view this as an occupation and an act they do for genetic connection rather than creating a blood tie. In India, surrogacy is kept a secret from her family and it is considered immoral, unlike western

countries. [25]Innumerable people in India associate surrogacy to sex-work, this leads to sexualised stigmatisation of surrogacy. [26]

In Western countries the psychopathology of surrogate mothers is assessed before intended parents can approach them or after intended parents have approached them.[27]

Surrogate mothers think their contributions are valuable and it is in fact valuable, making a couple's dream come true feels like a treasure gift for them. Many surrogate mothers report feeling unvalued for their efforts once the baby is born and due to stigmatisation they are abandoned by the society and sometimes by their family members. Surrogate mothers. Surrogate mothers are expected to act in accordance with the wishes of intended parents. They are emotionally controlled by medical clinics and parents, both. Surrogate mothers are unable to express their true selves and they are forced to abide by someone else's wishes and demands. This can be very taxing for women. Since a woman's initial instinct is to be considerate, they are trapped in this vicious circle of not acting according to their desires.

Careful navigation is required to monitor emotional well being along with physical health of surrogate mothers, experiencing attachment issues, postpartum depression and societal stigma without any legal backing to regulate their rights. Many Indian feminists adopted the Marxisit and radical feminist approach of surrogacy as a double exploitative tool- patriarchal and capitalist impact.[28] A surrogate mother is aware of the intended parents, contractual obligations etc. but many times she is unable to understand technical and medical terminologies. If a woman refuses to sell their reproductive labour then it will give the State power to elucidate things that constitute legitimate and illegitimate reproductive practices, whereas allowing wage will empower women to have legal authority to make choices regarding their reproductive capacity. [29]

Inequitable Representation in Surrogacy Laws in India

Surrogacy laws landscape has changed significantly throughout the years, especially with the introduction of The Surrogacy (Regulation) Act, 2021 which introduced crucial changes in this medical field. There are challenges which come along with it. These include discourses on sexual orientation, marital status and economic background of intended couples. The current surrogacy

laws in India permits only heterosexual couples to opt for surrogacy. This agreement excludes homosexual couples, single parents to opt for surrogacy. This is contradictory to the evolving status of family in India. In Deepika Singh v. Central Administrative Tribunal (2022)[30]

The court highlighted how law and society's definition of "family" does not reflect the ever evolving status of families. They may take different forms, single parents, homosexual couples etc. It doesn't reflect the real status of many families. 20% of

Indian households have single parents.[31] This is a significantly high number and the legislature has denied them access to surrogacy. This perpetuates discrimination and stigma against people who do not fit into the "conventional methods" of marriage. In the case of Supriyo V. Union of India (2023) [32]The Supreme Court held that non-recognition of same sex couples does not hinder their right to privacy, sexual autonomy and right to choice. Surrogacy laws in India prohibits same-sex couples from accessing it. Same-sex relationships have been decriminalised in India but still the option of surrogacy is not available for them. This is discriminatory and against all progress LGBTQ couples have made. [33]Several surrogate mothers choose surrogacy due to their regressive economic status. They view surrogacy as a form of labour which needs to be done in order to escape abject poverty. There prevails no proper implementation of surrogacy in India which is why they lack just compensation for physical and mental labour and there is no protection as well. [34]Eligibility criterions for surrogate women are obscure, they must be married, must have at least one biological child and should be between 21 to 35 years of age. This prevents eligible women from becoming surrogate mothers. The Surrogacy (Regulation) Act, 2021 infringes rights enshrined under Article 14[35] and 21[36] of the Indian Constitution. Choice of a person to reproduce is given to them under Article 21 of the Indian Constitution. [37]These rights are inalienable and indivisible and no person or authority should take these right away from anyone. This law is not inclusive for intending parents as well. It prohibits a couple who have a biological child of their own from having a second child through surrogacy. It completely denies the existence of secondary infertility in couples. This disrupts the concept of family planning and is

against the principle of reproductive rights of women. Allowing couples to plan their families will only tighten familial bonds.

Fiona MacCallum (2003)[38] conducted a study wherein the researcher revealed that 91% of surrogate mothers undertake surrogacy in the United States for mainly three reasons. These are; to help an infertile couple, to earn money by delivering a baby(commercial surrogacy), and sometimes they enjoyed being pregnant. Reasons why women in India undergo surrogacy are very different. Men are the sole breadwinners in an Indian family but sometimes they are not able to earn sufficient money to meet the needs of their family. Therefore, women help them in earning money. Women oftentimes are uneducated and take casual work. So women who become surrogates do so for reasons such as getting money immediately, paying off family debts, buying a house, or educating their children. Sometimes women who opt for surrogacy are employed before but the prospect of earning more money than what their previous jobs were offering lured them.

Conclusion

Indian legislature introduced altruistic surrogacy in India to eliminate any and all concerns regarding commercial surrogacy since many exploitative practices were attached with commercial surrogacy. It eliminated foreign parents coming to India for surrogacy as this resulted in more exploitation of vulnerable women. Surrogacy laws in India only allow 'close relatives' of the intended couples and intended mothers for surrogacy. Many stakeholders have objected to this new legislation. They claim altruistic surrogacy to be patriarchal, discriminatory and draconian in nature. [39]The term 'close relatives' has not been defined in the legislation and finding a person either related by blood or not is a difficult task for women, for people usually do this for financial compensation. There is no country whose surrogacy laws India can take inspiration from. Ukraine and Georgia have favorable environments legally, ethically and socially. These countries are accessible for foreigners and have a fair support system. Rights of each stakeholder must be well defined in the statute, rights of surrogate mothers must be formed to safeguard them from any sort of exploitation. All surrogate mothers must fully understand contracts they're entering including technological terminologies, if required intending parents must pay for surrogate mothers counselling. There must be a cooling off

period so that surrogate mothers have enough time to rethink their decision. They must make all decisions without any sort of pressure and should make informed decisions regarding their body. Pregnancy is an emotional process in general and for surrogates to be separated from the child they're giving birth to is even more tasking. Counselling pre, during and post pregnancy must be given to surrogate mothers, this will ensure their emotional well being.

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Counterfeiting and its Impact on Trademarks in the Fashion Industry Through the Lens of Indian Law

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Abstract:

The fashion industry is emerging as one of the massive global lucrative markets and multibillion sectors, where most of the items manufactured results in the growth at alarming rate of counterfeit products, mainly because of globalization and the broadening of digitalisation.This research study delves into the far-reaching, intricate implications of counterfeiting on brand integrity, economic stability, and consumer trust. It presents a study on the existing Indian legal framework, placing gaps in enforcement and the difficulties created in the fight against counterfeiting, which can be present in the pertinent problems stakeholders, including designers and law enforcement agencies, might face. The research further explores how counterfeit activities distort the competitiveness of fair market competition and what impact it has on India's global standing in the fashion and trade sectors. The study also touches upon leading-edge and emerging technological solutions like block chain and artificial intelligence that are changing the face of detection and prevention of counterfeiting. Such advanced methods give a glimpse into the future of IPR protection and hold great promise for more aggressive anti-counterfeiting strategies. The paper ends with policy recommendations, emphasizing better legal reform, cross-border cooperation, and the use of technology to eliminate this crisis of counterfeit-able designs.

Key words: Counterfeiting, Fashion, Consumer, Brand, IPR, Market

Introduction:

The fashion industry is emerging as one of the massive global lucrative markets and multibillion sectors, where most of the items manufactured results in the growth at alarming rate of counterfeit

products, mainly because of globalization and the broadening of digitalisation. “Counterfeiting” simply, means reproducing fake versions of genuine products to trick people into thinking they’re real in order to deceive them. Fake goods are reproduced in a way identical enough with the real good to make consumer believe that it is not the replica but the same name. Independent fashion houses increasingly fall prey to counterfeiters[1] "He who buys counterfeit pays twice."[2] Such sham or dupe goods are of very low quality. Henceforth, damages the overall brand reputation and image of the genuine brands, thereby hampering consumer confidence and trust. This subsequently leads to loss of trust among public on a genuine brand and hampers the overall goodwill of the brand so copied. "Counterfeit goods harm not only the economy but also the integrity of innovation and creativity."[3]

Counterfeiting is the process of producing unauthorized copies of branded products or intellectual products to deceive consumers into believing that these products are genuine. It violates the rights protected under Intellectual Property Rights (IPR), which are legal rights given to creators and innovators to protect their intellectual creations. IPR covers copyrights, trademarks, patents, trade secrets, and design rights. All these do help to encourage innovation, creativity, and economic growth and ensure that the originators benefit from their efforts. Counterfeiting often undermines this framework by creating an environment where creativity and originality are undervalued. The fashion business industry is also marred by counterfeit products such as fake designer apparel, accessories, and footwear, which flood markets across the globe, thereby reducing trust and diluting brands' distinctiveness.

CCB police raided two garment shops in Commercial Street and one in Shivajinagar, Bengaluru, for selling branded clothes and accessories allegedly as counterfeit goods. Two shops are producing and selling fake stuff by covering up with names of high-profile reputed brands and targeting unsuspecting customers. Clothing, belts, shoes, etc., worth ₹23.9 lakh were seized during the raid. Cases have been filed under different sections of the Copyright Act, 1957. This raid by police is a part of constant practices to prevent selling of pirated products as the growth in the fashion world has taken serious turns where fake branded goods are sold in the market to unaware buyers. These counterfeit products appear so similar to

the expensive brand that a retailer can sell thousands of these innocent customers before they find out that they are getting originals at a low price.[1] This disruption not only affects the financial standing of businesses but also hinders creativity and innovation. In addition, counterfeiting reduces consumer confidence in legitimate markets, which poses long-term risks to the intellectual property ecosystem and economic stability. Counterfeiting is a complex threat to the economy, intellectual property rights, and society.

By copying and using renowned brands, counterfeiters destroy the very foundation of intellectual property protection: the right of creators and businesses to maintain exclusive control over their products and innovations. Economically, the counterfeit goods create tremendous loss for companies, as sales revenues otherwise destined for legitimate businesses go into the hands of counterfeiters. The fashion industry is heavily affected as it relies more on branding, exclusivity, and design originality. The value of trademarks and trade dress decreases with counterfeits and leads to brand erosion. Beyond economic implications, counterfeit products usually pose safety and quality hazards to consumers. For example, counterfeit clothing and accessories may make use of inferior materials; thus, they may pose serious health risks, such as allergies. A recent survey reveals that 27% of consumers do not know they are purchasing counterfeits, and 31% intend to purchase them. Despite the risks, 89% of consumers confess that there are counterfeit products available in the market. Consumers are relatively often forced to purchase counterfeits due to price sensitivity, supply/demand imbalance, a desire to buy luxury brands, peer influence, and other social motives. According to a survey, conducted across 12 Indian cities including Delhi, Mumbai, Kolkata, and Bangalore, it was highlighted that apart from luxury items, even such common products are counterfeit in nature, including spices, cooking oil, baby-care items, and medicines.[2] At a higher scale, the trade in counterfeits supports illegal undertakings, such as organized crime and tax avoidance, thus causing systemic economic and social harm. Hence, this is the critical step for the preservation of innovation, the protection of legitimate business, and consumer safety as it concerns the issue of counterfeiting.

Legal Framework for Intellectual Property Rights Protection in India

India's legal framework for Intellectual Property Rights (IPR) has been quite dynamic in evolution and, of course, adaptation towards global standards, especially since its accession to the World Trade Organization (WTO) and adherence to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). These developments have given India fully fledged legislation to protect intellectual property and therefore to innovate and safeguard creators' rights. This structure is crucial for the industry of fashion, as intellectual property protection forms the bedrock to ensure originality and exclusivity in the marketplace.

1. Copyright Law in India

The Copyright Act, 1957, amended in 2012, offers protection to original works, which includes literary, artistic, musical, and cinematographic creations. In the fashion industry, copyright protection is relevant for original sketches, patterns, and visual designs used in garments and accessories. The Act grants economic and moral rights to creators, ensuring the right to control and monetize their work while preserving their attribution and integrity rights.

Key Provisions:

- Section 13: Recognizes copyright for original works.[3]
- Section 14: Grants exclusive rights to copyright owners, such as reproduction and distribution.[4]
- Section 52: Outlines fair use exceptions.[5]

2. Trademark Protection

The Trade Marks Act, 1999, plays a significant role in protecting distinctive marks, logos, brand names, and symbols that give brand identity. This protection is essential for fashion houses and businesses to maintain their market reputation and exclusivity. The Act also includes provisions for the registration, renewal, and enforcement of trademarks, with remedies for infringement.

Key Provisions:

- Section 18: Provides for the registration of trademarks.[6]
- Section 29: Defines trademark infringement with consequences thereof.[7]
- Section 34: Recognises prior use rights over subsequent registrations.[8]

3. Copyrights in Fashion

The Patents Act, 1970, as amended in 2005, protects new inventions that have novelty, inventive step, and industrial application. In fashion, patents are more related to technological innovations, such as new techniques for producing fabrics, wearable technology, and sustainable manufacturing processes. Artistic or aesthetic creations are excluded from patent protection under Section 3 of the Act.

Key Provisions:

- Section 3: Exceptions to patentability.[9]
- Section 53: Stipulates that the duration of a patent will be 20 years.[10]

The Impact of Counterfeiting in Fashion Law on Intellectual Property Rights

Counterfeit proliferation in the fashion world indeed stands as an influential menace against intellectual property rights. By violating the essence of creation, uniqueness, and identity, IPR have begun to see challenges on core principles and therefore have endangered innovation within the sector as well as overall development of the industry as a whole. The paper would attempt to critically discuss multiple effects on IPR stemming from counterfeit activity and draw its broad inferences from the perspectives of the fashion world. "Piracy and counterfeiting remain some of the major threats to economic growth; they hurt genuine IP holders, the government, and the quality of goods that consumers get. A weak IP system makes a nation depend upon foreign technologies, deplete foreign reserves, and struggle while trying to acquire critical technologies to develop a nation".[11] Trademarks are the most important components of a fashion brand's identity, from simple Dutch pottery marks and Roman brick marks, trademarks went into being essential for trademark identification of product quality, trade origin, and ownership.[12]

Copyright infringement is another critical issue arising from counterfeiting. Fashion designers' artistic creations, such as patterns, prints, and other unique features, are protected under copyright law. However, counterfeiters bypass these protections by replicating designs without authorization. In the era of fashion every individual wants to associate themselves with some prestigious brands.

However not everybody can afford it and the glitter of brand comes with hefty price tags attached. This is the only reason that incentivizes individuals to look for other cheaper alternatives available in the market. While it gives buyers immense happiness that they purchased a dupe that looks exactly same as that of the original product but many a times it invites several risks with it leading to harmful consequences. The product purchased is sure shot of substandard quality.[13] The rapid production cycles of counterfeiters often enable them to distribute copies even before copyright holders can take action. Enforcing copyrights also requires time and money and presents yet another hurdle to overcome in ensuring the protection of small and up-and-coming fashion brands' rights. Apart from the issue of copyright infringement, infringement through design patents is a problem to designers. Registered designs are often attacked by counterfeiters, because it provides them with exclusive rights over some aesthetic or structural features. Such an infringement creates economic disruption, as huge losses in revenue are realized among creators and the cost incurred to take the legal claims to court. Saturation of the market with replicas further reduces the originality and value of registered designs and diminishes their appeal to consumers.

The fight against counterfeiting is really challenging, It can only be tackled by governments and with the help of key stakeholders such as law enforcement and the private sector [14] and it must be achieved by coordinating international efforts from the legal, technological, and educational spheres. Treaties like the TRIPS Agreement [15]seek to harmonize global standards of enforcing IPRs, thus creating a more united front against counterfeiting. Technological developments including block chain-based tracking systems, and many other anti-counterfeiting technologies, improve the authenticity and track ability of products. Meanwhile, consumer education campaigns can significantly cut down demand as awareness builds about the adverse effects of counterfeit purchases.

Addressing the counterfeiting problem calls for a multi-dimensional approach that takes into account both national and international mechanisms to enforce IPR, investing in advanced technologies to monitor and authenticate products, and promoting public-private partnerships to help small designers in their fight against counterfeiters. Furthermore, educating the consumers on a

mass scale is a step that would greatly reduce the demand for counterfeit products, thus making the industry sustainable and promoting ethical practices. Emerging technologies such as blockchain, AI, and other digital tools are providing promising solutions to address counterfeiting, enhance enforcement mechanisms, and maintain the integrity of the fashion ecosystem. Due to the decentralized and immutable characteristics, block chain technology is revolutionizing the very face of supply chain transparency and product authentication. Brands can ensure that traceability for a product can exist right from production to its final purchase by a consumer with the help of unique digital identifiers or QR codes linked to the records in block chain. Scanning the identifiers allows consumers to check authenticity of a product, thus considerably curbing the circulation of counterfeit merchandise. Brands such as Louis Vuitton and Prada have already designed their block chain-based authentication solutions to safeguard their products from counterfeiters and preserve brand integrity.

One of the most powerful countermeasures against counterfeiting is AI. AI can thus process millions of listings on online marketplaces and identify patterns and counterfeit items by using algorithms in the form of machine learning. More importantly, AI tracking social media and e-commerce websites for trademarks, logos, and designs being used with an unauthorized status. High-range image recognition software further helps sort authentic from spurious with speedy action being taken against infringers. It involves inserting invisible marks in the product images or designs with the help of digital watermarking. These watermarks are traceable through special software that will help identify unauthorized reproductions and serve as proof in legal disputes, which then makes it easier to enforce. Smart contracts and non-fungible tokens (NFTs) have emerged as innovative tools to protect intellectual property rights (IPR).

NFTs will assign unique digital ownership rights to fashion designs, giving creators complete control over their intellectual property. These technologies will also give consumers proof of authenticity for digital and physical goods, hence instilling more confidence in authentic products. The integration of these high technologies substantially strengthens IPR protection. These technologies enhance the traceability of products, increase

transparency in supply chains, and expedite the identification of counterfeit products. The evidence of ownership and authenticity it avails is beyond dispute and facilitates easy enforcement by the brands and authority without escalating associated costs or complexity. However, challenges of adoption include the implementation costs being very high, the technical know-how required for application, and regulatory bottlenecks. Despite the existence of enforcement machinery, there are several impediments preventing their effectiveness. Indian legal process is lengthy in most occasions, which results in delayed trademarks infringement cases that allow free operation of counterfeiters.

Higher litigation costs deter small and medium-sized enterprises in the fashion business from litigating with the trademark owners. Jurisdictional complexities compound the problems of enforcement: typically, goods involved will come from a source outside, raising issues of jurisdiction and further clouding whether an injunction will be able to be enforced. And to an inadequate extent are consumers sensitized to the harm which these counterfeits do - the reduced effectiveness of remedies of law. The ability of counterfeiters to reach customers has increased because of online commerce sites, which are generally unregulated, and comprise a vast and unmanaged marketplace, creating tremendous monitoring and regulatory problems. Policy Recommendations: The issue of counterfeiting in the fashion industry needs a multi-faceted approach that strengthens legal frameworks, enhances enforcement mechanisms, and fosters public awareness.

Amendments to the Trade Marks Act, 1999, in trademark laws should enforce a higher level of penalties: severe fines and more substantial imprisonment terms for offenders against repeat offenders.

Intellectual property courts or tribunals for exclusive disputes over counterfeit products as well as trademark infringement disputes. Making it compulsory for e-commerce and physical sales outlets to carry certificates of authenticity for trademarked products would ensure better compliance and reduce the proliferation of counterfeit goods. E-commerce platforms play a significant role in combating counterfeiting. They should verify the genuineness of products being sold by sellers, in accordance with trademark laws. The use of AI tools to identify and delete fake listings can further reduce

counterfeit sales. Amending the Information Technology Act, 2000, to make e-commerce platforms partly liable for selling counterfeit products would increase their accountability. Public awareness is another very important point. There needs to be a nationwide campaign for raising consumer awareness about the economic and social damages of buying counterfeit products. It should collaborate with the fashion companies, influencers, and trade bodies in creating awareness of the effects of trademark infringement and the gains of supporting original fashion. Building upon capacity-building programs for customs personnel to identify counterfeit fashion merchandise, and integrating high-technological digital monitoring systems over tracking in imports and exports, such detection and interception would thereby be increased. International co-operation in information sharing or joint efforts would further serve to enhance efforts to cross-border counterfeiting issues.

Support to small and emerging designers is a must to maintain creativity in the fashion industry. Legal protection should be made affordable with reduced trademark registration costs and simplified procedures for SMEs. Government grants or subsidies will cater to small designers for providing trademark protection, and incubation centers will be an important source of mentorship for them to understand complex trademark protection. Technological solutions such as block chain technology can facilitate new ways of authenticating products securely and prevent tampering in the supply chain. This may include other layers such as digital watermarking using RFID tags that protect the designs and trademarks and may act as a guard to protect designers from counterfeiters. Legislative overhauls should fill the gaps in existing laws. Amendments to the Trade Marks Act, 1999, should provide express provisions for counterfeiting of goods in the fashion industry, particularly under trade dress protections.

A uniform anti-counterfeiting framework integrating trademarks, trade dress, and copyright laws would give comprehensive protection against counterfeit activities. Another important area is corporate accountability. The brands should be put under obligation to monitor the activities of counterfeit products and report them to the authorities. There should be incentives for whistle-blowers, such as employees and partners that can effectively help track counterfeit operations in supply chains Judicial and

administrative reforms can also improve enforcement. Judicial education programs on the intricacies of counterfeiting and trademark laws specific to the fashion industry will ensure informed decision-making. Dedicated IP task forces within the police forces would be able to handle more effectively the crimes of counterfeiting. International cooperation is needed to fight at the global level against counterfeiting. Joining global anti-counterfeit alliances under the World Intellectual Property Organization (WIPO) can harmonize domestic laws with international best practices. Free Trade Agreements (FTAs) with major trading partners should include strong provisions against counterfeit goods to bolster international cooperation. These recommendations deal with legal, technological, administrative, and social dimensions of counterfeiting in order to address the problem on an integrated platform. Having roots in Indian jurisprudence, they strengthen the very structure through which India safeguards its clothing sector against widespread counterfeiting.

Conclusion

Fashion product counterfeiting remains one of the principal difficulties encountered by the enforcement of intellectual property rights, specifically trademark.

Analysis of the scenario from the Indian perspective brings out the strong requirement for better legal frameworks, stronger enforcement mechanisms, and a more informed awareness among all the stakeholders.

The law on Indian trademarks, Trade Marks Act, 1999, is therefore a great foundation in the protection of brand identity. But this rising tide of counterfeit products underlines one area: gaps in implementation, enforcement, and consumer education. Counterfeiting hurts the economic interests of legitimate businesses and affects consumers' trust and safety. In this regard, counterfeiting erodes originality and value in authentic designs, thereby causing knock-on effects that damage brands' reputations and innovation within the fashion industry. Effective counterfeiting prevention would require collaboration from both the government and industry bodies to work together with consumers. It will require more stringent punishment, the adoption of high technologies like block chain for a clear supply chain, and campaigns on consumer education about this product. In conclusion, Indian law has taken

commendable steps toward protecting trademarks in the fashion industry. However, the emerging threat requires dynamic responses. The amalgamation of legal, technological, and social initiatives can safeguard the integrity of trademarks and support the growth of the Indian fashion industry in a counterfeit-free environment.

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Threads of Exploitation: Analysing Labour Practices and Worker Rights in the Indian Fashion Industry

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Abstract:
Much, much more than average human lives, the current Indian fashion industry consists of culture and pulse and the bright and dark experiences concerning exploitation of most rights, if not at labour. The present research paper intends to provide an overview of the practices in vogue but indefinable under what globally, socio-economically, and politically impositions made on the practices that render them so popular and celebrated. Garment workers are generally poverty-stricken, abused, and oppressed. It has an impressive history in terms of textiles, yet many women work without wages, for long duration, and have less or no legal protection. The overwhelming majority of these victims, mostly women, are under pinched but forced labour abuse with harassment and other demeaning things happening to them. Problems are compounded with the growing fast fashion, which actually focuses on cutting costs and speeding up turn-around times than improving the ethical standards of workers during their manufacturing processes. Otherwise, the cycle of exploitation would still continue unless a very strict implementation of procurement and labour laws would be enacted. Moreover, it also tackles the problem of consumers' awareness and their activism which in some way facilitates the improvement of the situation in the industry. By examining the literature and current practices related to labour, this research aims to fill the gap in the fashion industry that is

characterised by the exploitation of workers and environmental destruction.

Keywords:
Fast fashion, Labour Rights, Exploited Workers, Environmental Destruction.

Overview of Labour Practices in the Indian Fashion Industry:

Deep rooted in history, the Indian fashion industry is one of the strongest pillars of the economy and cultural identity of the country. Known for its intricate craftsmanship and rich designs, India's textile legacy is centuries old. But the industry is shifted a lot nowadays; the major threats are the conditions of labour under which garment workers work. Fast fashion and globalization tend to aggravate the problems even further making it all the more complex entering into territory where tradition guards with exploitation.[1]

The report concerns a more historical background, current labour practices, and socio-economic implications on the labour force affirming the urgent need of systemic reform.

Be it the historic allusions that mentioned craft to commodity India had already made a site for its own craftspeople who would spin silk, cotton, and wool into finer textiles, tell much-the-same-story anytime high quality craft city names mentioned, such as Varanasi, Surat, Kanchipuram. However, the colonial exploitation initiated from the British has now wreaked havoc on a once flourishing handloom industry. Today it has become a picture of chaos with its policies on import of British manufactured textiles, banned local production, resulting in Indian textiles being relegated to fringe economy about art and artisans[2]. Indian independence ushered in a new consciousness or rather concerted efforts of the Indian government to rejuvenate the textile industry, both of which were seen as future wealth creators.

The biggest engines were to be post-independence-the 1990s liberalized economy combined with the fast-paced global trend of fashion: it turned to mass production and cost-effective making, leaving nothing much for almost the most determined themselves from the thrust on quality craftsmanship out.

Currently, it is so much that an illegal and unauthorized factory may be mostly textile produced in India, while the same labour rights turnbuckle into continuity cycles of poverty and exploitation.

Exploitative Labour Practices in the Modern Era:

Absenteeism and irregular employment typify the exploitation of work. Informality is one of the characteristics of employment in the Indian garment industry, which marks a significant portion of a workforce as belonging to small unregistered establishments and unregistered outside the purview of the regulations under labour laws. All these establishments do not meet the standards at the level of minimum wages; at health and safety level; at social security level.

Dissimilarities in Wages and Economical Atrocities of Migrants: As per reports, 85% of contracted workers from garments in India get salaries lower than the computed minimum wage. From this, a fair number draw approximately Rs.5,000-6,000 on a monthly basis (approximately USD 60 to 75), which is devoid of a living wage. This economic devastation drives these workers into the informal credit market and subsequently leads them to face an income insecurity situation.

Long Working Hours; Unsafe Working Environment: Garment factories work for more than 12 hours a day. Almost all of them work in very competitive shifts without breaks, and almost no one gets overtime pay. The places of work are poorly lighted; very little ventilation is there, and they lack protective equipment; hence it creates further choking suffocation. In most cases, they are exposed to hazardous chemicals observed in workplaces without any protection, leading to health problems in later years of life.

Discrimination in relation to gender: In India, female garment workers seem to be in the majority, with more than 60% of the workers being women in this industry. Although these opportunities have been made available, the workers have to face many pre-employment vulnerabilities; wage discrimination, sexual harassment, and non-availability of maternity benefits. In reality, women suffer from two types of exploitation: exploitation because of their domestic responsibilities, which gives no chance for betterment.

Factors Contributing to Exploitation:

Transforming global supply chains are the fast fashion industry's revolution. Such globalisation in the name of power actually transfers both nation and nationality with those of brands and global retailers that increasingly demand cost-effective rates produced for workers and so decreases or totally eliminates benefits

for these workers, along with some very poor conditions for living and working.

India boasts of quite good labour laws but leaves very much to be desired when it comes to their implementation. Among the laws which exist is the Minimum Wages Act[3] and, among others, the Factories Act[4].

This research indeed brings in yet another example of the deep well of disillusionment in the garment workers in terms of unionization rates in the industry. Some cost-cutting measures include retaliation against union-registered workers, threatening or, sometimes ignoring entirely, an independent union, frustrating whatever very little might remain of collective bargaining with skills so low that it might not even end up yielding returns concerning earnings or conditions.

Socio-Economic Outcomes of Labour: These forms of alienated labour have bound these workers and their families in poverty and deprivation, as they have become part of the eternal Indian industry making garments. Sub-minimum wage has still been left unattended for employees as it does not even meet the basic requirements, like food, health care, housing, etc. Most are now going to informal lenders who would gleefully soak them into high-interest debts, which would further deepen their insecurity. In poverty, there is usually little disposable income left for one to invest in the future and is thus rendered vulnerable to economic conditions.

Poor working conditions coupled with poverty bring much suffering to a worker's body and even psyche. Working amidst dangerous levels of dust, poor ventilation, toxic chemicals, and intolerable noise directly leads to chronic ailments like respiratory problems, skin diseases, and muscle problems.

The consequences of socio-economic impacts affect not just the workers but also the families that depend on those affected workers, especially children, who mostly go through the hurdles of chronic poverty. Schooling is mostly disrupted, and many kids prefer to work so additional earnings can come to the household rather than publish an intergenerational poverty cycle. There are even worse cases of women-labourers, for they constitute the major workforce. They are under oppression at the workplace, which deprives them of their ability to achieve personal or professional empowerment

because of the domestic duties. These conditions only warrant immediate reforms to break such a vicious cycle and improve life quality among garment workers and their families[5].

Calls for Reform: (Toward Ethical Labour Practices)

Systematically alleviating the Indian garment industry needs all players, be it governments, businesses, or civil society organizations. Workers' rights are to be secured through effective enforcement of labour laws. India has a lot of labour legislation, but the implementation is undulating. Inspection, strict penalty, and mechanisms to bring informal workers into the purview of law would pave the way for a more equal place of work. In this sense, the government should also make reforms for making legal processes facilitating the accessibility of the workers into a redress mechanism.

Another major reform addresses increased unionization and collective bargaining. The ability of unionized workers to negotiate fair wages and safe conditions as well as other entitlements is further developed as well. Unfortunately, intimidation and retaliation against union members have been among the usual practices against which the formation of unions will be counselled. Legislation for the right to organize and freedom of association for the worker and against any act or failure to act hindering or interfering with the exercise of such rights is very critical.

Corporate accountability could be yet another force ushering in a paradigm shift. Now, with the advent of a global market, brands and retailers must be able to afford ethical sourcing. Such approaches may include transparency in supply chains, appropriate remuneration practices and shutting down subcontracting to unregulated conditions. Improvements would thus be taken to condition labour. With regards to employee engagement, companies need to have different kinds of Corporate Social Responsibility (CSR)[6] initiatives that will emphasize the welfare of workers, such as health benefits, skills training, and pathways for upward mobility.

Consumer awareness could yet be an additional agent of change. It has brought consumers more closely to a demand shift into a non-faddism practice-the shift to ethically produced goods and thus moved businesses into getting competitive through sustainable and fair labour practices. Advocacy campaigns while well as

certification to the ethically produced clothes can enable making a consumer base that supports such labour-friendly brands.

Last but not least, the empowerment of workers through education and training would enhance much their capacity to fight against exploitation. Thus, workshops on labour rights and grievance mechanism would enlighten the workers on their entitlements and recourse mechanisms.

Drivers of Economic Exploitation:

Fast fashion has dramatically altered the global fashion industry, and the same has affected the labour dynamics for garment workers in countries such as India. Fast fashion refers to rapid production cycles and cost efficiency, which usually mean trampling underfoot the rights and welfare of workers. The demands of fast fashion and the implications they have for outsourcing globally reflect structural forces that entrench injustices in labour.

Impact of Fast Fashion's on Labour Exploitation: Marketing and production models of fast fashion rest on the speed, price, and volume for their positioning. The collection was quickly rolled out to bombard consumers with incessant supply of new offerings. The pressure is built on manufacturers to maximize production and make cost-effective supply possible with such a short turnaround time.

What the employers and managers do to fulfil these demands is to compromise salary and working environment. Many workers are paid below minimum wage, overtime is usually forced without pay, with long production targets requiring workers to remain at least 12 long-hours under very extreme physical and hazardous conditions, and last but never least, productivity output must be high as an icing on the cake.

Because of the nature of fast fashion not even allow the manufacturer to vie against such conditions. They give contracts to factories competing against one another and having the lowest of costs and then getting many from the brand. This encouragement gives a minus to the suppliers in terms of misconduct since he or she does not want to earn through narrowing the base or abusing workers by losing thousands of dollars from their competing factories. Cost pressure coming from above not only sleep labour rights but also contribute to structural inequalities within the system[7].

Role of Global Supply Chains in Affording Exploitation: Supply chains are the most dominant aspects of the fashion industry

in the present world. Production is spread across many countries altogether in order to benefit from regional differences of cost. They are only a fractional part about outsourcing Indian international brands of savings that can be realized by hiring through low remunerations from a huge and informal labour market. In these cases, such companies normally give their production to an intermediary company whose focus is on dynamically shifting the project out to smaller, less-registered units beyond the complete purview of the supplier. The worst abuses happen beneath the wrack and ruin of these horrible informal factories, where the lowest come to carry out work.

Outsourcing India international brands as them very small proportion of what can be saved by hiring through low remunerations from a huge and informal labour market. In such cases, many times, the companies involve the production with an intermediary company, which externally moves it dynamically to the small, less-registered units, beyond the complete purview of the supplier.

Such fragmented supply chains unfortunately do not add to good bargaining rights to the workers. Workers are not directly employed by the brands which earn profit from their labour, thus making it quite difficult for them to demand good conditions or wages. And the very fear that production might be diverted to cheaper labour markets tends to discourage the governments from imposing stringent labour laws as the business would close down and move to a friendlier place[8].

Legal Framework of Labour Laws in India:

India is reforming the labour laws in absolutely a different angle that focuses on protecting labour rights through fair treatment, a good environment for work, and sufficient salaries. Some among the core central statutes dealing with these aspects are the Factories Act, 1948, and the Minimum Wages Act, 1948. The Factories Act primarily is for safety, health, and welfare of workers in industrial establishments and prescribes standard norms for that environment. The underpinning of the Minimum Wages Act is the base wage determined and prescribed by the government, which guarantees the safeguarding of wage levels. But revolutionary were the provisions and although there are progressive purposes in them, these laws have

not produced ends according to expectations because of systemic enforcement issues[9].

Fragmented Labour Laws: Disintegrated Labour Laws Among other considerable barriers to effective enforcement are disintegrated labour legislation in India. According to this country, there are more than 40 central labour laws and most probably several state laws that are often overlapping, inconsistent, and confusing in their application.

Corruption Keeps down the Inspection Mechanism: The most injured aspect of the inspection system is in the labour law inspection whereby the whole inspection gets highly stained by corruption. There is a lot of factory inspections that take place mainly under bribery deals; this is why an employer is found to know loopholes by being bribed with the inspector. Most of the time, violations such as unsafe working conditions, underpayment of wages, and absence of welfare facilities are not known because of the collusion of regulatory officials.

There are blanks glaring in the enforcement of labour laws in India. Many factories operate without licenses, and they escape the very inspections meant to determine compliance for them. This is compounded with the low level of legal literacy among workers. Most of the workforce is unaware of specific rights according to their labour laws, whereas those who understood their rights are deterred from seeking redress.

Gender-based Discrimination and Violation in the Fashion Industry/ Garment Industry:

Discrimination and Violence against Women- the Garment Industry The garment industry relies heavily on women; women comprise an important part of the workforce which performs every function in production, but they are met with systematic discrimination and violence-making their suffering agonizing. The subtopic centres around two main areas: first, wage discrimination, second, types of harassment at the workplace. These issues shed light on both aspects and highlight their effects on women in the apparel industry.

The Salary Inequality in the Garment Industry: The garment industry is known by having the greatest number of women employees doing various operations that could be linked to a majority of the production activity within the industry. However, it

is noted that women earn less than the actual wages that should be allocated for them based on the amount of work performed. Research proves that female garment workers earn as low as 30% less than their male counterparts even while performing similar or sometimes more labour-intensive work[10].

It is justified that this wage difference accords with certain fixed notions about the roles that women play in families, where they are expected to earn as much additional income as would be expected to be primary income for the family. However, this view directly deludes real hard truth perceived by most female garment workers. Actually, these persons go through poverty of being single or earn a substandard salary for the household-main breadwinners.

Harassment and Safety Problems in the Office: The other problem affecting women in the textile business is health hazards at places of work. Research done on this by Action Aid shows that nearly 50% of female garment workers have experienced some form of harassment at the workplace. Types of harassments reported include verbal abuse, inappropriate comments, really bad physical assaults, and sexual violence. Some do not speak out because of fears of reprisal

Barriers Structural and Cultural: Structural and cultural factors usually come with gender and violence/discrimination in the garment industry. In this context, quite normalised or quiet about the abuses there is an expectation of difference that specifies the "correct" behaviour between women and men. Further complicating the scenario is the absence of proper enforcement mechanisms against wage discrimination and harassment, allowing employers to remain unaccountable for their actions[11].

Consumer Awareness and Labour Practices in Fashion Industry:

The consumer role and their behaviour as most important in labour practice issues in the fashion industry is their trying to create awareness on the ethical dilemmas that fast fashion has with consumer activism having the potential of evolving into an avenue for rights-based voicing to demand higher labour standards[12].

Effects of knowledge of consumers on labour practices: Consumer awareness starts from knowing the latest batch of fast fashion exploitation-permeated labour to their changes in purchase behaviour. The movement like "Fashion Revolution"[13] has

contributed this change significantly. Such movement asks for the accountability of diversity in the brands by shedding light on the supply chain. The call is, in short, to visibility- visibility into "Who made my clothes?" a phrase coined by Fashion Revolution[14].

Research says that brands that listen to customers with regard to works-their production practices give birth to stronger relationships and loyalty from customers. Conservation may sound sweet, of course; but it has been proven as bad as it brings boycott and loss of customers. Such playacts above the line in accountability operations have rendered fair trade certifications obligatory in most fashion brands such as those that partake in these fair trade certifications. It enables the improvement of working standards to its gendered regular conditions and lays bare its sustainability strategies to the public, among others.

Obstacles to Consumer Activism: Yet it does have some barriers from which consumer activism cannot just flourish- first, ethical fashion is by nature more expensive than fast fashion. After that of course this would go with the fact that people would have developed an understanding all their purchases are up to par but then ignorant of what impact these purchases are actually having, and then probably also having been green washed by the brands.

Permanent Devastating Outcomes of COVID-19 on Labour Rights:

The actual defects in the garment workforce have been made more manifest by the pandemic. Factory locks-out have thrown thousands out of work, some losing a portion of their pay due to a failure to sever severance payment (ILO)[15]. In addition to the existing problems, a home screen employment status without social protections is one of the most grievous oversights for welfare during the nature of deepening recession. Recovery hence provides a new venue for stakeholders at government-at-large, brands, and industry leaders to rethink labour models. Fair wages and social protections as well as a new ethical supply chain could go on to make a more sustainable recovery that builds rather than recycles exploitation norms for workers, creating a new threshold and reinventing labour practices at this joint opportunity.

Conclusion:

The development of this sector has played a critical role in fostering global manufacturing and job creation. Yet, systemically,

problems are rife within the backbone of this industry. The pandemic has made these exploitative practices and all forms of gender-discrimination in terms of wage differences more tangible, making it appear as if it could not be more easily captured. This awful manifestation has exposed the inequity of a workforce whose gender considers women as the most vulnerable in any job loss and pay cut Event.

On the other hand, consumer consciousness and activism should function as counter voices to demand greater accountability and ethics in the industry. Awareness campaigns such as "Fashion Revolution" illustrate how interestingly informed consumers can put pressure on brands to guarantee measures for the rights of employees used in their operations. Joint strategies of stricter enforcement, consumer advocacy, and inclusive reforms have the potential to impact positively toward a better future for workers in the garment sector.

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Debt Justice Redefined: India's Creditors Before and After the Insolvency & Bankruptcy Code 2016

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Abstract-

This research paper aim at examining the historical development of creditors rights in insolvency with specific to the IBC Act, 2016. Starting this paper, relevance of creditors' rights in the overall environment of the financial system is discussed and a special focus is made to the role that these rights play for the stability in financial system and for proper working of financial market. It discusses the evolution of IBC and looked through pre-IBC laws namely SICA, SARFAESI and specific provisions of Companies Act aimed at handling insolvency, and the problems that creditors complained subjected to ineffective and fragmental framework systems.Post the inception of the IBC in 2016, India experienced a paragon shift towards a one-window solution for fast insolvency resolution mechanism. The paper review the important aspects of the IBC such as processes of debt The paper additionally expands on the specific works of secured& unsecured creditors after IBC, highlighting the advancements in the special protection to the secured creditors and the treatment of unsecured creditors that were not protected under pre IBC laws; it also highlights the priorities in payment under the concept of the waterfall mechanism. It also responds to issues and concerns relating to IBC or Insolvency and Bankruptcy Code such as delay in resolution process, CoC troubles and effects of judicial interjections. The paper is organised to show the enhanced credit recovery and NPA management as well as the role of IBC in restoring investors' confidence by using case studies and data analysis

Keywords: Historical, Special , Judicial, Recommendations , Insolvency ,Creditors

Introduction

Creditors' rights are a core part of the financial ecosystem that provides stability and trust to the investors. The rights give creditors, both secured and unsecured, power to get their debts back in the event of a default by the borrower to keep liquidity in financial markets onshore. Such assurance over creditors' ability to seek enforcement of the claims on defaulted assets and payments enhances the lender's and investor's confidence in lending and investing in businesses and individuals. When creditors' rights are protected, the protection also helps meet broader economic objectives, such as reducing NPA, increasing credit, and doing business with ease. Ignoring these rights also means we deny fairness and predictability in debt resolution processes, which serve the interests of creditors and debtors.India's insolvency framework has develop through an evolution driven by the country's changing economic and legal priorities. Insolvency laws were historically often fragmented, with laws designed to serve narrow, often conflicting, objectives, leading to inefficiency and prolonged legal struggle. The colonial era started the journey of insolvency laws in India, followed by legislation as the **Presidency Towns Insolvency Act 1909** & **Provincial Insolvency Act1920.**[1] These laws deal with individual insolvency & bankruptcy but lack the proper mechanism for corporate insolvency. Later, **Indian Companies Act** (**1956)** passed for the winding up the company, but there was no structured approach to rehabilitation or satisfaction of creditors. Concurrently, banking-specific legislation such as **Recovery of Debts Due to Banks and Financial Institutions(RDDBFI) Act 1993** was enacted to recover financial institutions. [2]Still, it needed to deal with the insolvency problem in a comprehensive manner.**The Securitsation and Reconstruction Financial Asset and Enforcement of Security Interest (SARFAESIs) Act, 2002[3],** introduced a landmark step that allowed secured creditors to impose their security interests without having any recourse to court. Utility of SARFAESI, however, the act was criticised because it is favoring secured creditors at the expense of unsecured creditors. It thereby resulted in inequity in creditors' treatment.

The government brought in **the Sick Industrial Companies (SICA)** and **Board for Industrial and Financial Reconstruction (BIFR)** around **2000s** to deal corporate distress. Despite this, BIFR proved ineffective in procedural delays and abuse in terms of procedure by debtors, making insolvency problems worse.A series of Committee recommendations had made from the **Tiwari Committee Report (1981)**[4] and the **Narasimham Committee Reports (1991 and 1998)**, highlighting the necessity of a unified, time-bound insolvency regime.[5] However, a common mechanism in this process was not present until the coming into force of the **Insolvency and Bankruptcy Code (IBC) 2016[6],** which constituted a significant reform.is a path-breaking reform designed to solve existing inefficiencies in India's insolvency system effectively. The IBC is enacted to streamline problem resolution into creditor empowerment, timely resolution, and value maximization's objectives and significance can be understood through the following key aspects. addresses an essential need for an efficient insolvency regime for India's financial ecosystem.

Legal Framework Governing Creditors' Rights Pre-IBC

The passing of Insolvency & Bankruptcy Code2016, the Indian law governing creditor[7]s' rights can be consider to have been governed by a repertoire of laws that is not been comprehensively covered by any code or statute in regard to insolvency and bankruptcy. Key legislations were (Special Provisions) of 1985 (SICA[8]), and the (SARFAESI) Act, 2002 and provisions as per Companies Act, 2013 The SICA was adopted because of India's continuous rising in number of cases in the year of 2016 where it has been find out that as per the data creditors hade limited power. On a brighter note, creditors primarily had an very little legal power under SICA because it was enacted to take precedence over bankruptcy & liquidation in order to reintegrate the ill companies. In addition, the BIFR was slow in making decisions and it hinder the cause of creditors trying to recover the amount. By this Act, banks and all financial institutions had the legal right to recover dues, and possess or take over secured asset without reference to the court. While bringing efficiency & effectiveness enforcement aspect in creating a security interest for creditors, when the Debtors oppose the process of enforcement, creditors require assistance. However, the insolvency framework lack a structurd insolvency procedure that

did not come into existence left any petitioning by the creditor to the NCLT out for liquidation or restructuring as ineffective to address distressed assets for companies. The current sections under the Companies Act, the SARFAESI Act and SICA were overlapping with one another that there was confusion when any of them was applicable. Thus, creditors were simply left to run from pillar to post between BIFR&(DRTs) or the Courts which are anyway suffice with different processes & timelines. Especially where there was no security, creditors did not have access to strong and wide ranging remedies for recovery.

The absence of a comprehensive insolvency framework meant that distressed companies were never under a time-bound resolution process, which meant creditors could not recover dues. **The Debt Recovery Tribunals (DRTs)** and **the Board for Industrial and Financial Reconstruction (BIFR)** were constituent features of the pre-IBC system: both were consistently peppered with complaints regarding their inefficiency and how creditors were not sufficiently address by tribunal - DRT was established under Recovery of Debts Due to Banks and Financial Institutions Act1993, to ensure a tracking mechanism is provided to banks & financial institutions to recover their loans[9]. It consisted of DRTs whose primary function was to hear applications by creditors choosing to recover debt in excess rs10 lakh.

The objectives of this code were to promote transparency, reduce delays in the insolvency proceedings and confer more substantial rights to creditors. However, with the Code, a new system is introduced that was differed from the old system, which was invariably cumbersome and unsympathetic to the creditor. it made several provisions to give creditors a better position in insolvency matters. The provisions were meant to improve creditors' ability to recover dues in a time-bound manner and protect their vested interests in all process stages.

Initiation of Insolvency Proceedings (Section 7, 9, 10): IBC gave creditors right to initiate insolvency proceedings against a corporate debtor. Financial creditors (including banks and other financial institutions) can apply at **(NCLT)** under Section 7 of this Code if the debtor defaults in paying a debt. Under Section 9, operational creditors (such as suppliers) can do so; under Section 10, the corporate debtor can. The provision allows creditors 'to decide

when to trigger insolvency', which means the debtor's insolvency will be dealt with promptly.

The IBC introduced two primary mechanisms for debt resolution: It dealt with Corporate Insolvency Resolution Process (CIRP) and Liquidation.Therefore is principally based on the CIRP, which is the recognised mechanism for the rescission of corporate insolvency. if the corporate debtor gets into insolvency proceedings,resolution professional (RP) will be handed over to the management of the corporate debtor, and the board of corporate debtor will be suspended. Potential buyers or investors must submit a resolution plan to the RP, who then would decide on the financial situation. The Committee of Creditors (CoC) composed financial creditors, reviews the resolution plans and picks the best one for creditors. [10]

The debtor is then liquidated if the CIRP does not produce an agreeable resolution plan or the CoC Liquidates the company. Under this mechanism, the company's assets are sold, and creditors are given the proceeds amongst themselves under the priority laid under Section 53. Usually, liquidation is done when a company's businesses can no longer operate and must be sold to satisfy creditors' claims.Both mechanisms offer an orderly, time-bound framework for resolving debt issues, focusing on maximising creditor recovery. The regulatory body for implementing IBC is Insolvency & Bankruptcy Board of India (IBBI). Under **Section 188 of the IBC**[11], the IBBI has been established, as the insolvency provisions codified under the Code must be followed. Also, the insolvency process is undertaken to achieve a fair and transparent process. IBBI regulates insolvency professionals, professional agencies and information utilities to ensure they meet the prescribed standards. The code in the year 2016 has boughte about an significant structural changes in insolvency & bankruptcy law and attempted to align with international standards by placing emphasis on the protection of the interest of creditors, as well as a speedy resolution of the debt recovery process with a definite timeline. The difference between the pre and after-IBC for creditors' rights is striking in terms of recovery mechanisms, against whom creditors can sue, to whom the decision-making privilege is given, and the judicial oversight.

The Sick Industrial CompaniesAct & Companies Act 2013, provided for resolving distressed companies, but the executions could have been faster and more convenient. For example, cases under SICA can go on for years, with the Board for Industrial and Financial Reconstruction (BIFR) being inefficient in coming to a closure. [12]Procedural delays, backlogs, and failed enforcement similarly frustrated recovery in debt recovery tribunals (DRTs).On the other hande, the IBC introduced a time-bound insolvency resolution process. According to Section 12, the 180 days under (CIRP) can be extended by only 90 days. The process is this bound, and this binding of time significantly enhances efficiency through tight deadlines for creditors and resolution professionals who have to work for an outcome. Before IBC, creditors were better or worse off based on whether or not they were secured or unsecured. This gave security creditors a better recovery mechanism under SARFAESI Act2002 and enabled them to seize secured assets without the court intervention. However, unsecured creditors needed more choices in getting the money back, especially after secured creditors under the Liquidation process of Companies Act, 2013.

In the code, secured creditors (those who hold charge over a company's asset) are better placed than those in pre-IBC framework, due to this their rights had been increased. In a happier note, the creditors had primarily way less than no legal power under SICA, which despite its name, was designed prior to bankruptcy and pouring over of ill companies. Moreover, the BIFR was time taking and it was posed obstacles in recovery of dollar amount by creditors. This Act makes bank and all other financial institution possess the right to recover dues that they had received and the right to take over and secured asset without court. But the process of enforcement had becomes difficult while borrowers resist the process of enforcement; creditors need help in this regard. The reason was mainly that low recoveries was on account of lack of timelines of the assets .so, creditors had to run pillar to post from BIFR, DRT or the Courts which anyway function on different processes and timelines. Especially where strong and wide ranging remedies for recovery were not included creditors, there was no security.

Waterfall Mechanism

The IBC offers clarity and structures of claims priority in case of liquidation and a fair and systematic distribution of the assets. The disbursement order of the proceeds from the liquidation of assets according to creditors or another stake of IBC as given in Section 53. Costs of insolvency process of insolvency professional and other costs of running the resolution process are the priority. It prevents wasting time waiting for funds to mail out administrative expenses. Secured creditors follow and are entitled to receive payments based on their claims through the security of the collateral of their holdings. But they must hand the collateral in when they don't participate in resolution process. Secured creditors can enforce their security interest if the company is liquidated. First, only the secured creditors is paid from, and finally, employees and workmen of the company are paid up to a certain amount, including wages and retirement benefits.

Challenges and Criticisms of Creditors' Rights in IBC

This code 2016 had improved creditors' rights in India but faced several other challenges and criticisms. Despite others intent where the Code aimed to reduce the insolvency process, it could not achieve the goal in some other areas. The broad majority of these challenges often have to do with delay in the resolution and decisions made by (CoC) and impact of judicial intervention. The CIRP had a deadline of 180 day as per section 12 of IBC [9]and temporary limit granted in 90 days only. A time bound framework aims at making recovery faster and ending uncertainty which prevented recovery in the previous (pre-IB compensation) system. However, in practice delays are still a problem. Interestingly there are many reasons behind these delays. In cases with complexity and number of stakeholders frequently makes extension of discussions, disputes and negotiation over the specified period. In addition to that, tribunals like National Company Law Tribunal (NCLT) also suffer from capacity constraint which result in delay to hear and decision. It also adds undue pressure to an already clogged judicial system with more cases and fewer resources. It can also create delays in prompt fixes of distressed companies, ireful to the creditors waiting for the due. But delays like this undermine the IBC's goal of a swift and uniform insolvency resolution system, and creditors cry out that their interests should be prioritized.

Another area for changes is the necessary threshold for approving resolution plans. To be approved, a resolution plan needs 66% of the vote of the CoC by value.. As a result, there has yet to be a consensus, and many potentially viable resolution plans have been delayed or scuttled[10].These issues with decision-making and voting thresholds can undermine the efficacy of the CoC, and any delay or suboptimal result, such as missed opportunities to value maximise creditors, may occur.

Impact of IBC on Credit Recovery in India

The Insolvency & Bankruptcy Code (IBC) changed the credit recovery in India, offering a structured, transparent and time bound framework for resolving trouble companies. Since adopting IBC in 2016, debt recovery has significantly improved, including higher in recovery rate, efficiency, and creditor trust. We then analyse the effects of IBC on credit recovery in India based on data and case studies, the improvement of investor confidence, and the impact of the reduction of non-performing assets (NPAs) below.

Several case studies and recovery statistics can also be noted, including, to some extent, the impact of IBC on credit recovery. Code is for recovering distressed debts; pre-IBC recovery rates were low, and DRTs and BIFR were poorly equipped and slow avenues for distressed debt recovery. Both Companies Act 2013 & SICA had very less tools for resolution, and delays were expectedAfter this code , recovery rates have increased drastically.For instance, in the recovery of dues from Vijay Mallya's Kingfisher Airlines, the recovery to creditors was a relatively reasonable 40 per cent.

IBC framework also shows success in case studies like Bhushan Steel resolution. Tata Steel buy Bhushan Steel for Rs 35,000 core, although creditors got back a good chunk of their dues. The recovery of ₹42,000 crore to creditors is similar to what happened in the Essar Steel case[14].

The introduction of this code has provided investors in India with much confidence. The Code also emphasizes a time bound resolution wherein the uncertainty is abated and the necessary coordinating point between the creditors and investors are delineated. It has helped show investors that their interests will be protected when distressed companies are restructured or liquidated fairly and orderly, and it should make the country a more attractive place to do business, bringing more investment. The confidence

foreign and domestic investors have in being caught up in the murky brook of delayed debt recoveries is broken and the ease of doing business boosts.

Judicial Interpretations and Landmark Cases

This has evolved from critical judicial interpretations in this respect, directing the creditor's rights and the insolvency resolution process. Rulings by the Supreme Court and National Company Law Tribunal (NCLT) have brought much needed clarity on how claims are handled and how the credits are prioritised by the code . Yet they have also informed the development of insolvency jurisprudence in India, producing a better or more predictable, at least more transparent, route to a debt resolution.

Of all rulings, the most important one is in 2019 **in Swiss Ribbons Pvt. Ltd. v. Union of India**[15], in which Supreme Court uphold the constitutionality of IBC and indicated that it is the discourse of both the creditors an the debtor's something that is crucially describing balance of interest. The Court explained that the IBC is intended to ward off delays in resolving corporate insolvency, promote businesses' revival, and protect creditors' rights.

Innoventive Industries Ltd. v. ICICI Bank (2017) is another very significant case in which the Supreme Court stated that on entering (CIRP[16]), a creditor enjoys an absolute right to initiate the insolvency resolution an such right cannot be restricted or governed by court approval. The ruling strengthened the creditor's position by removing the former discretion to debtor to refrain from avoiding insolvency proceedings.

Conclusion: Findings on the Evolution of Creditors' Rights

It is a story about how the evolution in creditors' rights under the has been a radical shift from a fragmented & sometimes not-so-efficient pre-IBC framework. Before the IBC, creditors in India had only a disjointed legal structure in place with minimal options to discharge debt efficiently. Often, such mechanisms were slow; the Debt Recovery Tribunals (DRTs) had limited jurisdiction, recovery levels were low, and procedures were slow. Nevertheless, the IBC 2016 introduced a centralized, time-bound regime to increase creditor protection, accelerate resolution, and improve recovery outcomes.

On the other hand, the IBC has its drawbacks: delays in realised resolution, limited impingement of unsecured creditors, and

the necessity for judicial borrowing of flexibility in daunting cases. Overall, the IBC has substantially improved creditor rights; however, they need continuous adaptation and improvement to meet today's challenges.

Recommendations;

Even though the Insolvency and Bankruptcy Code (IBC) has changed the insolvency law in India and brought newbies into the insolvency space, the challenges in the space still exist, and the system needs to be improved to work with greater efficiency and equity. Though there are tight 180-day (plus 90-day extensional pull) timelines, there is always a delay, usually due to complex cases or external factors. The existing IBC framework could be improved and streamlined further by improving the capacity of the National Company Law Tribunal (NCLT) to handle cases in a quicker manner with various resources and personnel. The IBC framework, however, unevenly favours secured creditors and presents unsecured creditors with little ability in the Committee of Creditors (CoC). This imbalance could be partially solved by giving the unsecured creditors greater voting power or creating their platform for participation in voting.

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Navigating the Pharmaceutical Landscape: Understanding Doctor-Representative Relations in Drug Promotion

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Abstract

The Indian pharmaceutical segment exists in relation between medical representatives, physicians, regulating bodies, and consumers. The paper seeks to analyse critically, the legal aspects, ethical issues and public health concerns regarding these dynamics based on drugs promotion practices and their influence on prescriptions and patients' status. Aggressive marketing stratergies employed by medical representatives often prioritize commercial goals, influencing physicians to prescribe medications that may not align with patient welfare. Despite the regulatory framework such as the Drugs and Cosmetics Act 1940 [1]and the MCI Code of Ethics 2002, [2]gaps in enforcement perpetuate unethical practices, including the promotion of unapproved drugs, misleading advertisements, and conflicts of interest. Consumer protection statutes like Consumer Protection Act 2019 [3]and the Drugs and Magic Remedies act 1954 [4]offer legal recourse against deceptive practices but enforcement remains weak.

This paper also explores the application of criminal laws under the Indian Penal code 1860 [5]and ethical guidelines such as the Uniform Code of Pharmaceutical Marketing Practices[6]. Recommendations to address these challenges include mandating compliance with the UCPMP, enhancing monitoring mechanism, and promoting public education on responsible medication use. This paper identifies the need for legislative amendments improved enforcement, and independent oversight to bridge regulatory gaps

and curb unethical behaviours. By fostering transperancey and accountability, the pharmaceutical landscape can evolve in to patient- centric system that balances commercial interest with public health priorities, ensuring ethical promotion practices and protecting consumer rights.

Key Words:- Medical Representatives, doctors, consumers, patients, pharmaceutical industry, drugs , prescribing pattern.

Introduction

The Pharmaceutical industry is a crucial but complex industry at the intersection of health, commerce and regulation. It is in this setting that the relationship between medical representatives and physicians crucial role in drug promotion, prescribing pattern, and in the end, patient care. Medical representatives are essentially the interface between pharmaceutical companies and healthcare providers, and they use persuasive marketing techniques to sell products. However this relationship is often tainted by ethical and legal issue, especially when promotional practices focus more on commercial gains than on patient welfare. Aggressive marketing combined with incentives offered to physicians leads to biased prescribing behaviors, thereby compromising the integrity of healthcare delivery.

In India, this interplay is regulated by a variety of legal and ethical statues, such as the Drugs and Cosmetics Act 1940[7], the MCI Code of Ethics Regulations 2002[8] and the Drugs and Magic Remedies Act 1954[9]. These enactments attempt to regulate drug promotion, prevent misleading advertisements, and ensure ethical conduct among medical professionals. However, the enforcement remains a challenge with loopholes and gaps that enables the continuation of unethical practices.

The impact of such practices goes beyond moral lapses. These result in econom is stress to the consumer, improper drug consumption, and sometimes even risk of health. The legal framework for consumers, like the Consumer Protection Act 2019[10], try to compensate the consumers, but depend entirely on the strength of their implementation and public awareness.

The pharmaceutical sector in India operates within a complex web of relationship between medical representatives, physicians, regulatory bodies and consumers. Through this it aims at identifying the major challenges in implementation of exsting laws and to

explore possible reforms such as implementation of UCPMP [11]in the4 form of compliance to the code, enhancing more regulatory oversight and then promoting transparency. The study helps in the development of the pharmaceutical landscape as more ethical and patient- centric.

History of the role of medical representatives and doctors in drug promotion.

The Pharmaceutical industry is a crucial but complex industry at the intersection of health, commerce and regulation. It is in this setting that the relationship between medical representatives and physicians crucial role in drug promotion, prescribing pattern, and in the end, patient care. Pharmaceutical representatives are critical for filling the gap between drug manufacturers and healthcare providers. They help market products, share clinical data, and foster relationships with doctors. The role has been drastically changed due to the influence of changes in medicine, marketing strategies and technological advancement. Formalization of pharmaceutical marketing was a mid 20th century phenomenon, with blockbuster drugs such as pencilin, product-centric strategies were mainly used. Companies relied on scientific journals, medical conferences, and direct doctor communication to highlight clinical benefits. During the 1970s and 1980s, pharmaceutical representatives or detailers, became increasingly prominent, providing detailed drug information to physicians. Initially, these representatives were science-driven but quickly incorporated marketing tactics to influence prescribing behaviors.[12]

Competition grew in the 1990s and 2000s, leading to a shift toward relationship-driven marketing. Champions of representatives took more of a product-application interface attempt, such as providing free sampler, event sponsorship, and supporting trial attempts in order to promote loyalty. This concurred with the subsequent emphasis on patient- centered treatment, under which physicians worked to combine the effectiveness of drugs with the patient's characteristics.

The role of pharmaceutical representatives expanded further in the 21st century with advancements in technology and data analytics. Existing technology enabled the representatives to monitor prescribing trends, categorize target markets, and provide messages that would be more relevant. Tele- detailing, virtual presentations

employing digital media and touches points are now critical for reaching health care providers. It marks a transition from product-focused promotional techniques to management-based concepts of building up the relational approach with the help of analyzed data and IT solutions. Pharmaceutical representatives thus find themselves in the strategic position of developing rapport with physicians and other prescribers, understanding and interpreting the rules of patient access to prescription medicines, and adapting pharmaceutical promotion to patient-centred advertising strategies.

Understanding Doctor- Representative Dynamics.

Physicians and pharmaceutical companies producers have different needs and expectations that form the foundation of this relationship. While doctors may need information that will improve patient's condition, representatives are concerned with sales targets, and this is a dicennial environment that needs to be managed carefully.

As far as doctors' observations are concerned, the experiences from meeting with pharmaceutical representatives are very useful for gaining the information about new medications, outcomes of clinical trials, as well as drug efficiency. Because of this research that is now rapidly being produced, informatics in the health care provision system has become quite difficult for the health care providers to manage. Many people find it quite difficult to seek information regarding different treatment procedures, and representatives can be very much helpful in the following regards as a result. Promotional avenues like ; free samples/ drugs because this can convince the physician to use a certain drug for a patient. The representative side is driven by the necessity to achieve certain sales, and simply; the side wants wider access to the market with their goods. Representatives strive to cultivate the business like relationship with physicians who then consider them authorities that they can turn to. They are not simply marketing a product but are attempting to change the practices of prescribing through incipient trust, friendly conversations and targeted interactions. The role of the representative as advisor and marketer is further evidenced by the dual motivation towards selling and relationship management. [13]

Many studies have demonstrated that the promotional activites of pharmaceutical representatives influence the prescribing behavior of doctors. For instance, gifts, free meals and invitations to

sponsored events will create a subtle sense of obligation or goodwill toward the sponsoring company, which makes the doctor more likely to prescribe its products. Free samples allow doctors to introduce a medication to their patients, which might lead to long term prescribing habits. However, marketing-driven influences such as these often raise ethical issues, especially when in conflict with evidence- based medicines. The challenges is in making sure that promotional activities are not placed above clinical judgement. The need to balance marketing strategies with unbiased, patient-centered care is important is ensuring that trust and integrity in medical practice are maintained.[14]

Ethical Considerations in Doctor- Representative Interactions.

Doctors – pharmaceutical representatives interaction raises major ethical concerns when prescribing decisions are influenced by monetary and marketing inducements. Such ethical concerns have highlighted conflicts of interest, the strength of regulation and the far-reaching impact on patient trust. Conflict of interest comes when doctor's choice are influenced by incentives provided by companies rather than the best interest of their patients. They can include free meals, gifts for attending the sponsored events or events organized by the company or organization paying for the research. Even though such actions are explained by the need to fund medical education and professional development, they produce a subliminal suggestion to doctors that they must use certain medications rather than others, even though these are equally effective. This tension between medical ethics and the profit-driven motives of pharmaceutical companies underlines the necessity for clearer boundaries in doctor- representative relationships.[15]

International regulatory actually put lots of efforts to strive to curb these unethical practices and increase transparency. For example, the physicians payment sunshine act in the United States requires that financial relationships between pharmaceutical companies and the healthcare providers are disclosed. The EFPIA code [16]in Europe requires that strict guidelines be followed in terms of the interactions between doctors and industry representatives. While these framework have raised awareness about the issue, their effectiveness varies with crtitics arguing that loopholes and uneven enforcement undermine the impact. Their efficiency differs as

critics to loopholes and unevenly implemented regulations that weaken these rules.[17]

Patients are now more likely to wonder if a doctor's treatment advice is being driven by marketing by pharmaceutical companies. The resultant loss of trust undermines not only the doctor- patient relationship but also the entire healthcare system. Transparency is the way forward: health care providers and pharmaceutical companies must put evidence- based decision-making ahead of incentives tied to marketing. Transparency can be achieved through financial disclosures and enhanced regulatory compliance.[18]

The evolving landscape of drug promotion.

The pharmaceutical industry has seen significant changes in the last few years, with digital innovation redefining how companies communicate their products. This has opened up new opportunities for more targeted and efficient marketing while also introducing ethical and regulatory challenges. [19]

The advent of digital platforms has transformed the doctor-representative interaction into a new phenomenon. The traditional face to face visit, which used to be the most widely used method of communication, has increasingly been supplemented or replaced by virtual interactions. Virtual meetings and e-detailing have emerged as essential tools for pharmaceutical representatives to get in touch with healthcare providers.Video conferencing facilities enable representatives to physically conduct live sales pitches, product demonstrations and respond to questions from doctors instantly. This approach, however, saves travel expense and eliminates most obstacles to contact with a larger selection of providers, including those in remote areas. Social media platforms have also proven inevitable for the advertisement of drugs, and reaching healthcare professionals. Some of the firms include Linkedln, Twitter and others; Such firms help the pharmaceutical manufacturing companies in the sharing of educational content, exercising of professional discourse, and the creation of a thought leadership. Akin to TV advertisements, social media can announce other drug releases, elaborate on clinical trial findings or guide medical practitioners to further information thereby having a more engaging approach to promotion. The digital transformation has also come with it new possibilities of efficient reach to doctors. As a parallel, this engendered doubts over other online information sources,

especially for portals whose stringent filter for content was Undefined exist.[20]

Pharmaceutical marketing has changed thanks to the advent of AI and big data analytics as more opportunities for personal and targeted reach have emerged. The pharmaceutical companies now use predictive analytics to identify prescribing trends, segment audiences and tailor marketing strategies. For example, given a doctor's prescribing history, the specialty of a physician and the demographics of a patient population; an AI algorithm can use such factors to forecast a doctor's preference to a given drug. By using such data-crunching measures, executives can define very specific marketing appeals, which have been proven to capture the target audience's attention and spur uptake. The application of AI and big data, however, raises the following impressioning major ethical question. In one way, data derived from EHRs, prescribing databases, and communications may infringe on the doctor and patient's right to privacy if managed less responsibly. Further, hyper-personalization, made possibly by AI, in turn, could eliminate the clear distinction between providing useful information and controlling decisions. The threat is mounting that these kinds of practices may lead evidence-based medicines down a cul-de-sac by substituting marketing goals with clinical objectivity.[21]

Regulations of drugs of drug promotion has outpaced the development of digital regulatory frameworks, thus giving new challenges to oversight. Traditional rules, including how detailing is done and disclosure of financial information, aren't always prepared to deal with this type of digital marketing. Thus, the global reach of campaigns across social media makes it difficult to enforce country-specific regulation. Similarly, the use of AI in targeted physicians raises question of responsibility as algorithms operate in manners not aligned with guidelines now set. The challenges that the regulatory bodies need to meet are framing the frameworks especially for the digital marketing space. Setting standards for transparency in the online communications, ethical utilization of data analytics, and accuracy of information being shared online is also needed. Examples include requiring funding sources disclosed for social media content and mandating explicit consent to collect data.[22]

Recommendation for ethical and effective drug promotion

To bulid trust and credibility in the pharmaceutical industry, ethical and effective drug promotion must support evidence-based communication, appropriate regulatory oversight, and enhancing both the doctor and patient. Pharmaceutical representatives should communicate peer-reviewed research and clinical validated information to doctors. Only when using evidence-based results would representatives ensurers drug prescriptions reflect scientific soundness and best practice for the patient's good. The promotional literature will need to be checked and ensure it is not used for claims that are overly aggressive to create a sense of misunderstanding with healthcare professionals and harm patient care.

The authorities should also enhance the visibility of interactions of this market sector and health care institutions. Requirement to disclose gifts, sponsors, and payments should prevent current abuse. Higher sanctions for unethical advertising that includes false representations or coercive pressures to influence prescribers to use a drug are useful in preventing unproper behavior and encouraging adherences to ethical norms. 6.3 Doctor and Patient Empowerment Doctors should have a different source of drugs info, for example, the internet bases in the countries with developed public health services or third part reviews. It reduces the dependence on promotional material. Similarly, informing the public on some of the determinants that guide a doctor in prescription will make the patient engaged and have constructive discussions with the providers thus achieving better health. Meeting these recommendations will help the industry achieve the appropriate mixture of business and tone between practitioners and patients.

Legal and Regulatory Framework in India and Net Influence of Aggressive Drug Promotion

The Indian pharmaceutical industry to some extent work under certain statutory laws and regulation which provides for ethical business transactions for the benefit and safety of the health of the people. However, the efficiency of such regulation is regularly limited due to enforcement deficiencies and regulatory limitations. The Act called Drugs and Cosmetics Act, 1940 [23]is the base law regarding the approval, manufacturing and selling of Drugs in India. It makes the advertising of unapproved drugs and the communication of false information about the safety or efficacy of a medicine or treatment product, in particular, verboten. Nevertheless,

these provisions are not tightened enough, and therefore violations are possible due to poor monitoring and enforcement. Relevant laws do not fully control this situation, resulting in the negligence of pharmaceutical companies, and medical representatives who give exaggerated information to patients and potential users, without observing standard regulations, thus causing more harm than good to patients.

That is why the MCI Code of Ethics Regulations, 2002 [24]aims at reducing on conflicts of interest between physicians and pharmaceutical companies. It bans physicians from receiving any favour, meals, or commission from drug manufacturers in what can be construed as influence peddling. This also requires doctors to provide the generic names of the drugs they recommend so as to actually encourage the use of cheaper versions of branded drugs. However the enforcement of the MCI Code of ethics [25]is a major issue that has not been well implemented. Many offenses are not reported or rarely penalized, including physicians taking kickbacks or who recommend certain brands or products owing to rewards. These factors contribute to the phenomenon whereby pharmaceutical marketing interventions distort clinical decision making. Under the Consumer Protection Act, 2019[26], the patient who was harmed by a biased prescription due to misleading drug promotion will have legal redress. The Act also allows legal action against 'pharmaceuticals involved in misleading advertisements or unjust obvious business practices. That said, within this framework consumer perspective remains intact, although the proof of liability remains to be elusive since patients have no clue that they were prescribed certain medication on the basis of promotional techniques and not on a medical need. Likewise, the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, [27]also do not permit advertisements that are likely to spread false or exaggerated claims as for the value of the drug. Nevertheless, the implementation of this law is mostly of reactive nature and such advertisements can penetrate to the population and affect prescribing practices as the advertisements are launched.

The aim of the UCPMP[28] is to outline the rules of ethical drug promotion and prevent pharmaceutical companies from practicing expensive gifts to k-healthcare practitioners. However, the above plan has some serious disadvantages because it is voluntary,

meaning that companies are not under legal regulation by implementing the provisions of the UCPMP. Generally changing the UCPMP to a mandatory code may greatly help cut on unethical marketing practice and create and accountable pharma marketing system. Industry-generated drug promotion is a key determinant of prescription writing as it influences prescribers to choose unpopular and expensive medication over physiologically necessary and cheaper alternatives. This is a cause of many ethical and public health issues, considering the fact that we are in developing country, India, where health care is scarce, and the consume is inexperienced. Marketing of drugs and medicine often NOT focused on patient's needs and wants but stresses on concern related to commercial aspects and tend to influence the doctors to overpower the cost effectivity of branded drugs to generic ones. Such techniques as donating samples of the specific drug, holding sponsored events, offering financial or non- financial rewards for the physician. Inevitably, the written prescription can be influenced by the promotional consideration rather than the clinical necessity leading to poor health outcomes. On the one hand, patients, which are the ultimate consumers, suffer from aggressive drug promotion in several ways. Cost factors are well understood, as patients have to bear heavier price tags for expensive branded medicines administered to them based on marketing influence than actual need. Such prescriptions, therefore, prove very expensive to individuals who in many developing countries are unable to afford health insurance. Furthermore, another more specific problem can be discussed – improper medication use. Potential customers may also be misled to overuse medication to health risks, under utilize medication when it is necessary or even use the wrong medication. All these practices complicate existing public health crises like antimicrobial resistance resulting from the misuse of antibiotics or poor treatment outcomes arising from under dosage.

Conclusion

It is a vast connecting hinge between health-care, business and moral dilemmas, encompassing medical representatives, the physicians, regulatory authorities and the customers. Despite its importance of the sector in health care provision, the behavior of the sector has been associated with many ethical, legal and public health issues such as excessive promotion of drugs. The present work has

exemplified how the current setting, defined by promotional efforts that respond to commercial agendas, informs prescribing practices and undermines patients' benefit. However, currently, the absence and lapses of enforcement coupled with various regulatory legal policies such as the Drugs and Cosmetics Act, 1940[29], the MCI Code of Ethics, 2002, [30]and the Consumer Protection Act, 2019 [31]are still expanded. Such bad practices as the sale of unproven drugs, have falsely advertised and marketing products with free items that influence them.

The consequence of such practices is enormous and results in racism in prescribing practice, monetarily shifted costs of medications to the patient by forcing them to pay out of their pockets, and improper usage of the drugs. The consumers themselves, the patients, are the ones who are forced to pay more coined because of the most costly branded drugs which are often prescribed use where there are cheaper generic drugs but for reasons related to marketing costs related to incentive plans for prescribers. Ovido more, poor medication practices and management, including overprescribing, under-prescribing or the prescription of wrong drugs expand public health issues, such as multidrug resistance as well as adverse drug effects.

Solving these problems is possible only with the help of efforts at multiple levels. Mandatory adherence to UCPMP, [32]improvement of monitoring systems or increasing the rate of implementation of the existing laws should be pointed out as important regulatory changes. Trust can only be regained between the manufacturers of these drugs and the doctors, and this can only be done by ensuring clear and clean relations between the two. Furthermore, public enlightenment campaigns can help patient's make their own health decisions instead of being over depended on doctor's biased prescriptions.

To promote sustainable growth, one must encourage organizational accountability, business and professional ethics practice, and patient orientation for reforming the Indian context of operations of the pharmaceutical industry for both commercial and public health benefits. It only takes legislative amendments alongside independent agencies with enhanced enforcement of the changes to enable the formulation of a health care system that is more open and fair. Finally, this shift will help to implement

protection of consumer rights, defend the principles of medical profession, and provide population with improved health for all participants in the practical application of these professions.

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Intellectual Property in the Digital Age: Protecting Creators in the Digital Fashion Industry

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Abstract

Digitalization and new advancement in technology has transformed creative industries, creating vast and new opportunities for the creators across diverse fields- from writers and graphic designers to multimedia and 3D artists. Internet and platforms have promoted these creators to produce, share, and monetize their work on a worldwide scale, provided by intellectual property (IP) frameworks designed to protect their creation and works. However, this dramatic change has introduced prominent challenges in implication of IP rights. Committing the offence of copyright infringement has become easier and more prevalent in the digital space. Resulting, Intellectual Property Rights started facing new problems in the age of digitalization, with a revaluation of existing legal protections. One industry where these challenges are especially pronounced is digital fashion. Technology is pushing the fashion industry forward, which has made the digital fashion sector grow rapidly with innovation such as 3D design, AR, and digital fashion applications powered by VR technology, e-commerce, and social media.AR and VR are fuelling e-commerce in general and opening market demand for virtual clothing, accessories and avatars for designers and firms. Because of this rapid development new challenges are being posed to the world of IP, especially with others in protecting their rights regarding digital assets, and such issues include things that include unauthorized reproductions, infringements, digital replicas et cetera running a whole risk of getting unnoticed or unaccounted whereby a copyright infringement is being undertaken online and much more stressing exposed are

these other limitations posed by contemporary laws of IP on the digital platform.

This research aims to evaluate the effectiveness of current IP laws in protecting creators within the digital fashion industry. It will explore how well existing IP frameworks address the distinct challenges presented by digital fashion, where traditional IP protections often struggle to keep up with the rapid pace of digital creation and distribution. This study will also provide emerging suggestions regarding the solutions related to this problem, including technological innovations like blockchain for digital asset tracking and watermarking, and will consider whether policy reforms may be necessary to offer more effective and comprehensive IP protections in the digital fashion landscape.

Keywords: 3D design, Digital Fashion, Virtual Reality, Augmented Reality, Blockchain.

Background

The digital fashion industry consists of various aspects, including digital clothing, virtual fashion shows, and the use of augmented reality in marketing and designing various online stores. As designers create unique digital garments, the risk of infringement and unapproved uses increases. Traditional IP laws, such as copyrights, trademarked, and design rights, may not fully address the essentials of digital creations.

Introduction

The development of the digital age has greatly impacted intellectual property (IP). The rise of technology and the internet created the way for the people to create, publish, and consume information and the creative world changed dramatically. This creates new challenges and opportunities for intellectual property law and uplifts more questions the reason behind how intellectual property is protected and managed in the digital world.

This current rapid development in the digital age resulted in the serious issues which is intellectual property which is increased piracy and copying with the emergence of the new era of digital media. Graphic and information plays a very important role in the Legal showdown of (FOREVER 21, INC., a Delaware corporation vs. GUCCI AMERICA, INC., a New York corporation) Gucci and Forever 21, The design of stripes at the heart of the dispute. Gucci accused Forever 21 for infringing the trademark design of the Gucci

Blue-Red-Blue and Green-Red-Green stripe placement which is iconic design of the Gucci. [1]In march 2017, Puma filed a lawsuit against Forever 21 in the California federal court, accusing them that they stole the design of the Fenty shoes line defined by the famous singer and rapper Rihanna. Puma stated that Forever 21 violated their design patents.[2] The graphic helps brands to make worldwide recognition.

Addressing digital infringement of IP depends on profound collaboration between the countries and enforcement. The Internet is the global platform that connects everyone across the country. Due to this the cross-border violations are recurring in nature, making it challenging to uphold intellectual property rights[3]. The application of IP laws varies from country to country. The legal system which protects the artist and makes everything consistent that is not consistent when it comes to implementation. Intellectual Property Law safeguards creators engaged in artistic work, such as designers, design houses, and brands, from the negative impacts of counterfeiting and imitation.

The designer's original artwork is protected by copyright. In the words of Lord Reid*, "work of art is generally associated with the fine arts rather than with craftsmanship and maybe setting too high a standard. The whole concept of artistic craftsmanship appears to me to be to produce things which are both useful and artistic in the belief that being artistic does not make them any less useful."* In Amarnath Sehgal v Union of India and Another[4]Hon'ble Justice Jaspal Singh stated while delivering judgment, "where the moral rights of an artist were not honoured, in that country the creativity and talent can't flourish". Every country takes pride in its culture and ingenuity. It is unacceptable for anyone who cannot identify any difference between the heads of Venus and Mars. They cannot decide the future of the artists who shape our history and heritage.[5] The Indian legal system is adaptive in nature, Section 57 of Indian Copyright Act,1957[6] serves as a guiding principle in such matters.

What Impact Do Intellectual Property Issues Have on the Fashion Industry?

Intellectual property law is the pillar on which the whole fashion industry is standing and evolving. Runway shows serve as the budding ground where the new and upcoming designers can showcase their innovative creations, gain extensive media coverage,

and enhance their brand visibility.[7] However, only a few of the designs displayed on the runways make their place in the production lines. Most of the designs get stolen just after they get showcased in the shows and their designs are the most valuable IP assets for the brand. In The USA, there is a debate going on about whether copyright laws can be used to protect the unpublished works.[8]

Trademark is the primary way by which brands protect themselves in the United States. In STAR ATHLETICA, L.L.C. v. VARSITY BRANDS Inc, case was a significant example of this. - is expected to influence the fashion industry in the United States. The case, which came before the US Supreme Court, focuses on whether designs on cheerleader uniforms can be copyrighted and the requirement of "separability" for clothing and other functional items to qualify for protection under US copyright law[9].

The law has been primarily meant for justice, and laws regarding copyrights protect the ideas of the originator. The Copyright laws generally offer no monopoly protection for products that serve practical purposes. Copyright law in the USA applies only to distinct parts of a product's design that possess some unique functional aspect. It is this limitation of the copyright laws that sometimes irritates designers-it means that intellectual property law protects only a certain part of their creation without covering all the garment or accessory concerned. However, different types of intellectual property provide several tools to perform such a kind of necessity, such as copyright, trademark, and patent, where each one is meant for protecting creative works, a brand logo, and any technological innovations. Still after all these tools the protection of IP's remains the complex matter to protect for the cease of the fashion professionals.

Due to the sudden evolution of digital and technological advancements, protecting intellectual property is challenging. Designers facing issues like counterfeiting and knock-offs make their presence known to the public by using online platforms. while fast fashion's constant imitation of high-end designs complicates originality claims and enforcement efforts.[10]

The widespread nature of the current challenges has created the need for the reforms in the existing IP law to cater the unique needs of the fashion industry. Scholars and legal experts argue that existing laws often fail to offer adequate protection for fashion

designers, some of the scholars advocated for the broader implication of the IP laws, few suggestions are made in context of the implications are that instead of the protection the unique part of the garment copyright should protect the entire design of the garment or create specialized design patents. More nuanced legal framework is needed to adapt the pace of the fast-changing dynamics of the industry[11].

Piracy: A Daunting Issue

Content creation and distribution is democratized by the rise of the internet, giving everyone the capability to produce and share their work with a global audience.[12] Trademarks have become a crucial part of the governance for the fashion industry, reflecting a shift away from traditional public regulation toward market-driven, non-state frameworks. In the same way the internet helped creators to create the content or design and present to the public by just one click, this internet also enabled the individuals to violate the intellectual property rights[13].

To combat the piracy concerns, Digital Rights Management (DRM) is taken into consideration. DRM aims to prevent the material from unauthorized access, copying and distribution. It enforces copyright laws by restricting illegal activities such as file sharing and content duplication. DRM is not untouched by the controversy. Scholars say that this limit the rights of the consumers and creates a barrier in the enjoyment of the consumer's ability to enjoy the product to its fullest. DRM is the critical tool fight against the and struggles in balancing creator's rights and consumer rights[14].(*DRMs are mainly used in the Gaming industry or sites of the fashion brands.*)

The Digital Split

"*The Internet of Things*" (IoT) within the creative industries, the "digital divide" refers to the unequal access, usage, and influence of information and communication technologies (ICTs) within society. This divide is created as the technology is evolving rapidly with the incorporation of the IoT, creating various inequalities. IoT provides a common ground to every artist and creators to access the global markets but the access to such technologies are not equally available to all[15]. Factors like age, education, location and socioeconomic status plays a very pivotal role in how a person can use such platforms. These disparities can limit diversity and

inclusion in creative outputs and create unbalanced participation in the creative sectors. This digital gap raises significant ethical concerns, particularly regarding who can engage in creative processes facilitated by IoT and whose voices and experiences are represented or excluded from creative outcomes. It also highlights the role the creative industries play in either perpetuating or challenging existing socioeconomic inequalities.[16]

The Digital Age's Globalization Of Fashion

The process of fashion globalization has, been largely influenced by technological changes, especially the internet, which has closed the gap between cultures and areas. This allows designers to take their inspirations from diversified cultures to create collections that infuse various cultural aesthetics. A very public case of this was the legal clash between Thom Browne and Adidas in 2021[17], wherein Adidas challenged Browne's four-stripe designs, claiming he had infringed on its trademark. The New York jury ruled in favor of Browne, highlighting how tricky protecting creative expression can be in a global marketplace (Striped Suit — 2021).

Online platforms also democratize the astute fashion industry, giving a chance to new and upcoming designers who wish to display work without exorbitant financial backing. Chanel's lawsuit against the resale platform "What Goes Around Comes Around" in 2018 highlights the challenge to maintain trademark protection from counterfeit goods in a digital environment[18]. Likewise, the 2010 Varsity Brands case established the significant precedent that some design features-such as graphics on cheerleading uniforms-might be eligible for copyright protection (Varsity Brands vs. Star Athletica — 2010)[19].

With growing globalization comes continual challenges for the effective protection of intellectual property: Cases such as Louboutin vs. Yves Saint Laurent (2011)[20] and Gucci vs. Guess (2009[21]) emphasize the ongoing need for robust legal frameworks so that innovation keeps coming. This rivalry exemplifies the struggle between creative program and the exercise of rights under the heading of intellectual property rights to articulate the interconnected world in which we operate.

Fashion Designer: Legal Perspective

French Revolution in 1789, paved the new ways for the craftsmen and merchants to sell the fashion and commerce to

different countries. These changes allowed fashion designers to break free from the restriction. In the past, the law has not been very kind towards fashion designers and the fashion system in general for a lot of reasons. Even in the past when clothes were made to be worn or as part of a performance, the fashion industry regarded it as a craft and not art. This is because the law separates "fine arts", which are regarded as authentically creative, and "applied arts" which are aesthetic but more functional in nature. The system of copyright has always been biased towards applied arts with less protection compared to fine arts which diminishes the narrative of fashion designers as legitimate artists.

This bias in legal frameworks discourages the association of fashion designers with the status of great artists as they illustrate a plethora of legal practices within the culture. Different levels of creativity and the worth attached to each level just bring forth societal stereotypes as to what art and craft really are.[22] The distinction between pure and applied art is unquestionable in many areas simply as a feature of how hierarchical the area of art is perceived. This artist/craftsman argument can be correctly said to remain an active point in legal practice or theory.

Practical Approach to Digital Fashion Copyright Challenges

The wake of the internet revolution has brought a new set of problems to lawmakers and policymakers in relation to enforcing copyright protection. To respond to this challenge, steps have been taken to secure stronger intellectual property policy going forward. These efforts include enactment of new copyright laws, reforming existing laws as well as entering international treaties as a means of resolving problems arising from copyright issues that cross borders. One of the major goals of these efforts is the adaptation of the copyright legal framework to the conditions of the digital environment. This includes processes such as determining the limits of copyright for the digital market, fighting against illegal duplication of copyrighted material over the internet, and standardization of copyright provisions between the countries of the world.[23] For example, the US established the DMCA which caters to circumventing technological barriers as well as a notice and takedown policy for copyright infringement committed online. Policymakers, however, have not only focused on laws but have also put in place measures that seek to balance the need to protect creator

rights with access to information and cultural works. Policies such as fair use are found in US law while fair dealing is popular among other jurisdictions in enabling the use of copyrighted material can be used for purpose criticism, comments, teaching and research without prior permission[24].

Internet services providers(ISPs), tech companies, content creators, and distributors have collaborated to establish coalitions, share best practices, and coordinate enforcement actions to combat online piracy.[25] The collective efforts of all the feasts of the industry can make the specific anti-piracy organisations, creating voluntary agreements among stakeholders, fostering public-private partnerships to address digital copyright challenges and by using the help of artificial intelligence to identify and address the instance of the infringement of IP laws. AI and machine learning can create such algorithm that can detect and remove the unauthorized content online by automating content analysis and detection.

Conclusion

This current era of digital advancement uplifted the fashion industry, expanded the market space and drove unprecedented innovation. These changes also opened new gates for the new challenges in safeguarding intellectual property (IP). As digital fashion, 3D designs, and virtual clothing gain popularity, traditional IP frameworks must be changed accordingly to protect creators' rights while promoting creativity. Designers now struggle to navigate through the legal landscapes, grappling with copyright, trademark and patent laws that struggle to keep pace with technological advancements. To provide shield creators in the digital fashion realm, legal systems must evolve to tackle emerging issues such as the new nature of offences, digital piracy, and the constantly blurred lines between physical and virtual commodities. Adopting digital solutions offers promising pathways to safeguard intellectual property in the decentralized online sphere. Blockchain technologies, can provide an immutable record of ownership, while non-fungible tokens (NFTs) serve to authenticate and certify unique digital assets. As fashion critic Vanessa Friedman noted, "Digital fashion is not just a tool for creativity but a test of how we value intellectual property in a virtual world."[26]

To create safe environment and where innovation is promoted, it's important to establish robust, flexible intellectual property made

to fulfil the demands of the new digital age. By implementing new regulations would not only protect the work of individual designers but also drive the industry's collective growth and success. "Innovation is the lifeblood of any creative industry," says fashion entrepreneur Stella McCartney, "and protecting that creativity is key to its future."[27] It is essential to provide equitable remuneration and acknowledgement to digital fashion innovators, after all this would not the only support individual designers but also the industry's overall growth and prosperity.[28]

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The Legal and Ethical Dimensions of Abortion Rights: A Critical Analysis

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Abstract :

The legal and ethical dimensions of abortion rights remain a pivotal area of scholarly questions, contemplating heartfelt societal, cultural, and political tensions. This research amalgamates key insights from the latest academic literature to seriously go through the global discourse on abortion. Legal frameworks governing abortion disclose important disparities with few nations welcoming continuous policies when others enforce stricters rules. Ethical considerations, that are in depth grounded in the cultural and religious beliefs, additionally to complicate the argument specifically in equating maternal autonomy against the fetal rights.

The literature focuses attention on the critical gaps, taking into consideration the little empirical research on the societal collision of abortion laws, insufficient representaion of the higher sections, and inadequate investigation of technological improvement in the abortion care. This paper fights for an interdisciplinary look to labeling these critical gaps, combining legal analysis with ethical theory and public health perspectives. This supports for equitable, matter sensitive rules which respect an individual choice along with putting forth wider societal suggestions, therefore by giving to a more comprehensive and intricate comprehension of abortion rights.

Keywords : Abortion rights, ethical dimensions, equity, technological advancement, Ethical considerations, Legal framework

Introduction

An abortion is referred to as a medical process which gets an end of termination of pregnancy. It is a primary healthcare that is needed by millions of women, girls who get pregnant. It is roughly calculated that one in four pregnancies come to an end in an abortion every passing year and is an very pivotal issue and needs concentration.

In places where abortion is lawful and easily reachable and where there is very minute stigma, woman and girls can get abortions in a more safer environment and minimized risk factors. Nevertheless in places where abortion is considered as a sin , criminalised or often prohibited women are obligated to resort to unsafe abortions. It is roughly calculates that 25 million unsafe abortion are taking place every passing year, the larger majority of them in the developing countries and this can head place to disastrous repercussions like maternal death and disabilities. [1]

Every individual in the country has a right to bodily autonomy that is a choice to do what they want and feel safe for there bodies without a contravention of others, this is the main reason as every women when becomes pregnant should also be able to get done an abortion irrespective of the stigma that is being followed. Nevertheless woman from the historically backward sections have to go through severe societal consequences which hampers the ability to function reproductive choices of women. The Abortion arguments also get forward the ethical noting to the front. The rival between a woman's right to bodily choice and the recognized rights of the fetus that generally drives public discourse and regulatory decisions. Ethical perspectives are later complex by the cultural and the religious beliefs that influences societal behaviors which are often termed as attitude and legislations regulations. For example, in few societies abortion is looked as a moral transgression nevertheless of the situations whereas in other it is looked after as a fundamental right that is knotted to each individual autonomy and physical health.[2]

Abortion as a right

Universal Declaration of Human Rights (UDHR) stresses that rights of a living being are universal, be owned by everybody by the upstandingness of being a living people. Its preamble calls it a "common standard of achievement" for all reaffirming faith in the fundamental rights, human dignity, and equality between the men and women. Article 2 keeps a balance on the rights to keep back the true to all individuals on equality basis and Article 3 emphasizes the right to life as particulars of the rest, however UDHR has not posed any legal bindings on the humankind or mankind. The ICCPR goes long the UDHR. It expressly states the inherent rights to the life,

focusing that it shall be safeguarded by law and no one arbitrarily lack of life.

However in the U.S. law the term "person," does not include the unborn child but whereas ICCPR it focuses and uses the term "human being" that is inclusive of all living human organisms. Many people regard this as it being against abortion debating these documents do not establish a right to it. [3]

The historical comprehension of article 21 in the international law is often considered to start immediately at the birth. This is also hold ups the negotiation history of all the rights of human treaties, where schemes to extend to article 21 to conception that were rejected. Article One of (ICCPE) emphasizes that every human being has fair access from the birth to life whereas of various rights the symbols used are 'everyone' and 'every person'. The use of the terminologies possesses a question if 'every human being' is denoted with a wider meaning than 'everyone' and that is why it is believed to put the unborn child. There is an absolute lack of presence of authoritative literature on the above belief, but however it is true and very well understood that criminalization of abortion can raise questions in regards with life. This can be however put up in favor due to many suicide cases of young girls because of failure to carry out an abortion which is criminalized by the state and this infringes the right of life. There is another understanding that is brought up using art 12 CEDAW Convention, which puts that "States parties need to takee measures to remove the discrimination against women in the filed of health care to make sure, of equal rights both man & women, which will give access to health care services conclusive of that related to the family planning. [4]

Legal Dimension

Until the 1960s, abortion was considered as illegal in India. Until the new provisions were added on the women had to face an imprisonment of 3 years and/or fine under the section 312 of the Indian Penal Code, 1860 if the women wanted to abort her fetus or the child. The government in the mid-1960's had set up the Shantilal Shah Committee to pose questions whether India required a law to regulate the abortion of the woman in the society that had been going on. After the enquiry based on this, a bill was approved by parliament in August 1971. The topic of the law, The (MTP) Act,1971 was deliberately picked to strictly remain distant from both

religious or ethical protests and impart a medical reasoning behind giving a permission of such procedures. [5]

The objective of law was "An act to provide for the removal of certain pregnancies by registered medical practitioners and for the issues which are linked therewith or incidental thereto. However, the law was brought up to legalize abortion, promote access to safe abortion and stop the unsafe process by not well trained persons, in order to safeguard the women's life and health on medical as well as compassionate grounds and decrease incidences of maternal mortality and maternal morbidity. Criminalizing of abortion was a government tool in order to control the population density of our country. Later, legalization of abortion is seen to be beneficial to the medical practitioners as earlier it would punish the women under Section 315 – 316 of the Indian Penal Code. The Medical Termination of Pregnancy Act, 1971 began operated due to development which was made in area of medicine with respect to more safer abortions. This law gave women the rights to abort there child in safer environments under trained and professional doctors , regarded as helpful also for woman who had accidental pregnancies. In court ruling of Justice K.S. Puttaswamy (Retd.) v. the UOI & Others (2017), the court had recognized the equal protection of woman to make personal choice on there reproductive health inorder to complete the labor & take the child or not as sect of personal freedom and independence of Art. 21 i.e., right to life of our India Constitution, it states that no person can be deprived of thir life or personal liberty except according to the procedure that is established by law. Like the previous law that needed permission to abort the child now the law has changed and a pregnancy can be terminated upto 20 weeks by a woman who is married or not married in case of the failure of contraceptive pills or methods additionally there is no need of consent from any practitioner other than the woman who is above the age of 18 years incase of the child being mentally ill or unstable in these exceptional cases there needs to be a written consent given from the guardian. [6]

When we compare the abortion rights of India and USA, it is majorly seen that India has a significant progress. The USA treats abortion as an unconstitutional rights. The abortion rights have been strictly restricted in the USA since the Supreme Court's 2022 decision in the case of Dobbs v. Jackson Women's health

Organization which later overturned Roe v. Wade. Talking about the progress in India, we can see in the recent ruling of Uttarakhand High Court where a minor 16 year girl was raped and the court stated her wish to abort the child as if she would continue carrying the child in the womb it would harm her mental and emotional well being as well during same time.

The legal court therefore ruled in this matter that mere survival is not only that matter but what matters is also living with dignity. [7]

In the month of July 2022, SC of India stated it is truly a woman's choice in regards with the reproductive health as it since it is her own choice, will and freedom to do what she wises to under Art.21 right to life of our constitution.

Taking a case of Delhi (X v. Principal Secretary) they denied her abortion request since the pregnancy was caused from a consensual relationship which was outside of her marriage. Later, a bench that was led by Justice D.Y Chandrachud has opposed the decision and stated that the live in relations are legally recognized and the court should definitely not interfere with the personal matters and the bodily integrity.

Later there was amendment that were made in the MTP rules. They added a category specially for the ladies that were facing discrimination in regard with married and unmarried and made abortion eligible until 24 weeks. **[8]**

Therefore, the legal system in our country have advanced a lot when comparing to many long years and many other countries as well. It not only implement the provisions or rules for the married woman but also made the rules for unmarried women and women with the rape survivals which give women a right over there body and help with there mental peace as well which in total is good well-being. [9]

Socio-Ethical Dimensions

Abortion is considered as fragile mater that has to be dealt with caution and this has a broader notion where it includes all the social, religious and economic factors. With the evolution of time the feeling of abortion being a stigma has eventually gone down. This has both positive and negative effects. Earlier this was highly discriminated by the western civilizations. Only in the 20th centuries when a lot of factors like a woman's mental health her physical

health everything was looked after that's when they eventually began to legalize abortion in U.S.A.

In India there exists a lot of beliefs in the stigma, which is half filled with poverty and uneducated people, the MTP act is still playing a major role and there is an acceptance from a good number of people.[10]

In the MTP Act married woman are not at all considered to be a social stigma but there still lacks unacceptance of the unmarried woman. Since the unmarried woman are not easily accepted this creates a very big problem in the abortion in safer environment and there can be times where it adversely affects the very health of the woman as well who is undergoing abortion. There has definitely been a very positive impact in the society due to the implication of the MTP act as the suicide rate has reduced by higher denomination and it is a path to betterment of health and safety, yet there still lies some omen in the economically backward areas like the villages where yet the girls are taken to far off places for abortion despite of having medical facilities available in the village, they do this act for preserve the image in the society.

Though the (MTP) has been well introduced and is functioning in India, it faces some major challenges in the rural areas. There needs be proper education to the people living in rural area about abortion rights and the safety to abort. There is also an immense need for the government to overlook in the rural areas as there lacks hygiene, sanitation , insufficient staff and not proper provisions accessible that are adversely resulting in infertility, menstrual issues, pelvic infections and sometimes it also leads to death. [11]

The main issue is to put the law effectively, the government should note that the abortions are to be dealt only by the well trained medical practitioner and another important thing to note is that there are arising many cases where the act is misused like for exams, weddings or tours this has financial gains which is a profit and in order for the financial gains they are providing with false reports. These have short and long term effects.

However, in order to overcome the problem of this, there is an immense need for the government to start some awareness program for the people of the economically backward classes that the use of contraception is more better way as compared to that of abortion and

in case of time to abort yet that is considered not a sin and this can be done in a safe way.

Debates about abortion still continue in the world but to note that abortion is a right and choice of lady who is carrying child and hence no individual can stop the woman from doing what she feels correct. When talking about the social stigma there was a case that had emerged in the SC of Suman Kapur v. Sudhir Kapur (2016) it was held that a lady cannot have an abortion without the approval or consent of husband and if she does so this leads to mental cruelty and this can also be considered as grounds of divorce. But Justice Thakker and D.K Jain have reported that mental cruelty means the actions that are causing deep anguish, frustration, anger in the spouse.

After this judgement it brought into lime light that Indian Constitution does not give complete liability to access abortion even now and the Medical Termination (MTP) dosen't permit for pregnancies always but it allows only in a special circumstances and situations where all the grounds are rightly met and there is no violation of anything.

The supreme court held that in Ms. X v. UOI, that when a woman has severe fetus problems or abnormalities that can adversely effect her health in such situations the abortion can be treated procedurally after 20 weeks of pregnancy. The court has also provided abortion to the rape victims as a stretch till about 24 weeks of the pregnant woman in order for her to terminate the fetus anytime this also aligns with the international standards. Looking at the data, we can note several organizations which support this view like the International Federation of Gynecology and Obstetrics (FIGO) also uphold this view since removal or abortion of fetus merely lies with the children when there are abnormalities and this should be supported whatever the decision might be of the parents. In various other countries abortion is supported at anytime throughout the pregnancy with the only reason to prtect the health of the woman. [12]

Conclusion

The main objective of having the abortion legislation like the Termination of pregnancy (MTP) Act in India, is only to make sure that the women in India are safe have safe environment for abortion, they have access to abortion in a more hygenic place with well

equipped doctors and instruments. It does not only helop in providing of good service but also an addition into the primary as well as the community health systems. These organizations eventually have shifted to safer abortion tools which are modern and easier that will cause less health effects to the woman along with the enhancement of techniques of abortion. Levlling up and invention of the procedure of post case of abortion and these are considered as some important and crucial steps in order to reach to the goal.

Even after the enactment of the MTP Act in year 1971 we can still point several keen places where there lies unsafe abortion and this is a significant issue which is in India, that is leading to the high rates of maternal and morbidity and mortality. There are so many woman who are lacking the access to abortion due to many factors like., economic conditions, no proper facilities available, or even due to lack of awareness. This MTP hence permits for termination of child in speical stances like that of rape or when there is failure of contraceptives considering the mental and physical harm that has been inflicted. But identifying any problem or any kind of abnormality in the fetus of the woman cannot be done within 20 weeks time. We need to extend the scope of this act in order to permit for the termination of pregnancy throughout the time to resolve these gaps.

Abortion is not just considered to be as a medical issue but it is also seen as a social, ethical and a financial issue as well. Keeping a balance between the right of the women to terminate the child is understood as well, the woman shall take eminent steps while protecting the fetus and also ensuring the safety of the fetus. [13]

The society, the healthcare system, the legal framework all that are surrounded by the pregnant woman should support the woman who is facing any unplanned pregnancy or a rape victim by providing them with enough knowledge, providing them knowledge about the family planning, by being kind and compassionate towards them by also encouraging them towards abortion in case of difficulties as it is a tough time that a woman goes through and being as a moral support to the woman not only boosts her but keeps stability of her state of mind of woman also intact. The Tamil saint Thiruvalluvar had quoted that the joy of children gets to our knowledge about the mere importance of nurturing life. But however, it also draws a line for the immense need for assuring that

the woman of our country are well equipped with knowledge, resources and defienetely the most important encouragement to keep safe their own self and also of the other children whether they are born or unborn. By keeping forward the eminent fact of the unsafe abortions and to facilitate access to care, the society can uphold both the dignity of women and the sanctity of life as well. [14]

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Tax Evasion and its Effect on the Indian Economy with Reference to Income Tax Act

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Abstract:

The thrust of this paper is to analyse the impact of tax evasion on Indian economy as well as an elaborate study of the effectiveness of the key taxes statutes of India, namely, The Income Tax Act of 1961. Using such approaches, this research explores the methods and motivation for tax evasion, highlighting the socio economic consequences such as failed public revenue, increased inequality and slowed economic growth. The study further looks into recent government moves aimed at reducing evasion like expansion of digital monitoring systems. This paper through a comparative analysis seeks the reforms in India's tax framework while in parallel suggests strategies for increasing the compliance and improving fiscal transparency in order to build a conducive, robust and equitable economy. This research attempts to make a contribution to the ongoing discussions of how to improve the efficiency and fairness of India's tax system to support sustainable economic growth.ng public trust in the system. This paper aims to examine the impact of tax evasion on the Indian economy and provides an in-depth analysis of the efficacy of India's key tax statutes such as the Income Tax Act of 1961. This is done by exploring the methods and motivations behind tax evasion this research highlights the socio-economic consequences which include reduced public revenue, increased inequality, and slower economic development. Additionally, the study also assesses recent government initiatives like expansion of digital monitoring systems in curbing evasion practices. By using comparative analysis, this paper aims to identify potential reforms within India's tax framework while also suggesting strategies to strengthen compliance and enhance fiscal transparency,

thereby fostering a more robust and equitable economy. The aim of this research is to contribute to ongoing discussions on improving the efficiency and fairness of India's tax system in order to support sustainable economic growth.

Keywords: Tax Evasion, Income Tax Act, India, Legal Frameworks, Socio-Economic Impact

1. Short Introduction and history of taxation in India:

Taxation has been the backbone for governance since ancient India and the principles of public finance and administration that it ought to follow are extremely well explained in them. The Dharmashastras and Kautilya's Arthashastra mention taxation and by extension the support for state functions by way of taxation taking the form of levies on agriculture, trade, and professions as the base of revenue. Taxes were classified as forms resembling modern land revenue and income taxes, geared to be equitable, and in accordance with economic activity.

Kautilya's Arthashastra presents a sophisticated fiscal philosophy — fairness, proportionality and efficiency — although not unified into principles. Other words like Bhaga, and Kara marked agricultural and trade taxes which were collected periodically and not oppressive on citizens. Taxation should obey ethical standards that it may be both compliant and not uncomfortable, and that it be of the benefit to the public. In the area of taxation there was flexible tax returns during emergencies — this was a sign of adaptive fiscal policy.

As we study these historical frameworks, we derive lessons on how ethical and contextual fiscal strategies can inform contemporary fiscal planning in governance and economic planning[1].

India's taxation system depends on the Inc. Tax Act, 1961 which is the centre of taxation and has liabilities depend on residential status, source of income, and accounting methods. Taxpayers are (generally) residents or (less generally) resident but not ordinarily resident; or non-residents, with tax scope varying from global income (for residents) to just Indian income for (generally non) residents. This classification gives equal weight to equity and worldwide economic integration so that it attracts foreign investment at the same time that that's done in the fair collection of domestic taxes.

Infrastructure, welfare and economic development depends on tax revenues. One among the key provisions of the Act was to reward foreign remittances and compliance. Its business friendly policy also aids economic participation and growth by providing taxpaвs with the returns of Indian companies on its foreign income, and only of foreign companies it asserts on its income on asserting in India.

Usually, the Act is set to conciliate revenue generation and economic growth by fair taxation, promotion of investment, economic growth etc; while adopting a sustainable development. Integration into the global economy is fostered by its robust framework that equates domestic financial stability with participation in the global economy.

Analysis:

And first and foremost, tax to qualify as tax, must not qualify as expropriatory. The government provides to its citizens a number of amenities accompanied by services, they must only be paid what they have earned. It makes the process of taxation even more streamlined.

The statutes which govern it are the statutes on the age as well as the important thin line that taxation walks. That the money taxed in the affairs comes from a citizen's earnings, and tending to declare the laws about war taxes to be all the more scrutinizing than other laws; therefore great care in construing these laws.

Interpretation of statutes of such manner have been restricted in the following manner:

Taxation only by express words:

We use the term welfare state to mean that the state can still levy tax irrespective of whether it is in the favour of people whose welfare it gives. It is thus immaterial, whether a person thinks it to be beneficial or not.[2]

Take an instance wherein there are two plausible constructions of the same statute and effect must and should be given to the one that favors the citizen and not the one which goes against him, then this must apply similarly if a power granted to the public authority is granted through two several enactments.[3]

The Allahabad high court aptly summarised that the rule of interpretation of taxing statutes has to be as follows: ''in a taxing statute, everyone must look at what is clearly said. There is no way

and room for intendment. Nothing shall be read in a manner which can be implied''[4]

Rule to determine tax liability:

The Allahabad high court aptly summarised that the rule of interpretation of taxing statutes has to be as follows: ''This is once common in taxing statutes because in a taxing statute, we must all look at what's clearly said.'' There is no way and no room for intendment. In commisoner of income tax v. Parker (1934), the question was, 'nothing is to be read in or implied.''[5]

One aspect of income tax act that exists and fought is seen to be compounded one where i.e Comr of income tac v. shahzada nand and sons. In the said case, it could be seen that in place of the assessment year 1945-46 the income tax authorities on much record under section 34 (1) (a) of the indian income tax act issued a notice to the respondents.

We had already seen this and cannot have an intenment or anything implied. If the taxing statute is to be applied to such a transaction using otherwise lawful rights of parties to the transaction and is to pay according to the meaning and contents of the language used in respect thereof in accordance with the ordinary rules of construction, then reworking the taxing legislation in a statute form is a futile exercise.[6]

With respect to income tax act commisoner of income tac v. shahzada nand and sons can be seem functioning as another complicated issue that can be fought with. The facts in this one case were that in light of the matter of the assessment year 1945-46, the income tax authorities had issued a notice under sub section (1)(a) of section 34 of the Indian income tax act in lieu of the said respondents as the assesse; the grounds that the notice under section 34(1)(a) was time barred; the reason being that the assessment year in question was after the time period of 8 years covered by section 34(1)(a) appellate authorities set aside the assessment made pursuant to it. Section 34 was provided with sub sections 1A by the income tax (amendment) act, 1954. Under section 34 (1A) the inc. tax authorities were found in power to serve notice in regard to escaped income of previous years within the period 1 september 1939 and 31 march 1946.

Taxing statute to be construed strictly to give power to impose tax:

The expression 'to make return' used in Sec. 23(4) of the inc. tax act, 1922 was unable to give any meaning of delivery of the return by the assessee or its receipt by the said officer. If proved beyond doubt that even while the receipt by the inc. tax officer is absent, the return was prepared by the assessee, it would be sufficient as compliance with the provisions of section 23(4). In interpreting the term used in section, reference shall be tailored to the context throughout, which the expressions in question are used in the statute. (Redundancy is urged by this court in its p 121-22)[7]

Earlier Decisions and Governing Principles:

Going forward with the interpretation from an older provision of a taxing statute which the department has interpreted and accepted, and acted on, is not an easy thing to throw away or give up. Perhaps there is another view of the law, but the law is not some mental excersice. The court while reassessing the decision that was pronounced long back takes special care to avoid untoward catastrophes that are likely to befall as result of unsettling settled law.[8]

No Extensions by Implications:

''The rule of construction of a charging section is that it is only when a charging section claims to apply to a person prior to the taxing or going, before to the taxing and person, the charging section must be shown to apply to him by clear words contained in the charging section." Nobody can be taxed by reason of implication. A strict construing of a charging section is necessary. If unequivocal words are absent, bringing a person within the scope of the charging section, then no such person can be taxed at all.[9]

"This point of contention was whether tax should be deducted at source before payment of interest to the NOIDA or whether the authority had been established by or under statute and as a result, is exempt from tax deduction from the source.'' The SC distinguished between a body created by statute, and the body which comes after coming into its existence is governed, according to the provisions of statute; NOIDA was found to have been established by a notification under section 3 of UP industrial development act 1976 and hence entitled to the exemption.''[10]

No Extension by Analogy:

The category of fiscal enactments cover court fee legislations, which should be strictly construed. It is also a well settled principle

that the court fees is the thing payable not on the structure of the relief but its pith and substance, and even the plaintiff may attempt to hide the real relief sought and the court fee may be framed so as to attract the Provisions of Court fees Act, in which the Court fee is less but the Court may look to the substance and not to the form of the relief.[11]

No straining of Language:

The legislature therefore must provide machinery for the assessment of the estate of a deceased person to a tax charged on the deceased in his lifetime, and must not leave it to the court to endeavour to extract such machinery out of unsuitable language of this type of statute.[12]

No Equitable Construction:

A taxing statute must be viewed in a manner of clear expression. It cannot give meaning to anything not there, nor import into the statute any pro visions for the sake of supplying any assumed deficiency. There is no equity on a tax and on no presumptions of tax.[13]

Although the equalities which obtain are principle with regards to the construction of taxing statutes are of no avail, they should strike between the essential needs for revenue of a modern welfare state on one hand, while in the other the desirability that the citizens shall know what this liability is in advance of calling upon them to pay the revenue.[14]

Fair Interpretation:

often, the rule of strict construction of taxing statutes is misinterpreted. It is not, for a fact, a matter regarding law, saying that a taxing law shall not be reasonably construed.[15]

There need not be any doubt that it shall be treated as a taxing provision and need to be given the benefit of strict construction by the courts as also is the case with ambiguity the said benefit will need to be given to the assesse. Now that, is not quite the same with the saying that a taxing provision ought not to receive a reasonable construction. Modern decisions on the whole has a tendency to reduce down the materially difficult difference between what is called a strictly and beneficial constructions of rules or of language.[16]

The principle is limited to charging provisions or a provision which imposes penalty only and cannot be applied to, machinery provisions contained in the taxing statute.[17]

In case of endless litigation and if a person is not able to make the acquisition of the property within the stipulated time fixed under the statute on account of continuation of said litigation, the supreme court has permitted the same to complete the purchase within the reasonable time but with benefit of long term gain of capital within the ambit of S.54 of the inc. tax act, 1961.[18]

Universities are exempt under the Inc. Tax act 1961. It was contended that foreign university and press owned by it, engaged in printing, publishing and the selling of books within india were also embraced in the said exemption. The court stated that exemption applied to foreign universities, but not to press owned by them. Their reason being their observation of the instituition's purpose coming under scrutiny. It also depends on how its established and who the applicant for the income that is being taxed is and also its mean of income, whether or not it exempted such assesed income from tax and if yes, whether such exemption was meant to entice institutions conducting education but not such as those conducting business to earn profit.[19]

Intention Of Legislation How Far Actually Effectuated:

It has been the opinion that statutes designed to levy a tax shall be so construed as to defeat their purpose where the words will admit of as many constructions, and one of them must produce the taxable character, and pure construction is not contrary to intention or purpose of the law. The opinion, that when words that admit of a doubt between mind, either of the tax collector or the tax payer, that one ought to refuse to collect, and the other ought to refuse to pay, which also deserves limitation is also present these days. The effect is to give effect to the intent of the legislature, which may be collected from the context of the entire statute, reading and construing with regards to the purposes expressed therein. Interpretation of a fiscal statute requires that the dialect of the statute be understood. Any addition of words is not warranted and all that should be relied on is the language used to determine the precise meaning and intent of the legislation. The doctrine of natural and ordinary meaning requires that the court ascribe meaning to the words which the legislature has used and mandates that the court

cannot, under any circumstances, read the statute any way other than the manner in which it would naturally and ordinarily mean were it possible to derive the same intent the legislature had as revealed by a simple reading of the statutory provision.[20]

Tax Planning And Tax Evasion:

''the word evasion, may mean either of two things. It may mean an evasion of the act by something which, while it evades act, is within the sense of it, or it may mean an evasion of the act by doing something to which the act does not apply. The first of these methods suggests underhand dealing, the second merely the intentional avoidance of something disagreeable which is a wholly different thing. There is no obligation not to do so what the legislature has not really prohibited and it is not evading an act to keep outside it.'' As said by Odgers.[21]

In the case of mcdowell and co v. commercial tax officer it was found that manufacture, sale (including wholesale or retail or transport thereof), storage, was regulated under Andhra Pradesh excise act, 1968 of sale (including wholesale and retail); storage and transport of liquor. Under the Andhra Pradesh general sales tax act 1957, the appellant had paid sales tax payable by it, on the liabilities of its turnover excluding the excise duty paid by its wholesalers in respect of the liquor sold by them. Consequently, the taxing authority instructed the company to answer why assessments called for may not be re-opened. It was prayed to the appellant that since it as never come into its hand, that the excise duty shall never be considered as a portion of its turnover. The contentions of the appellant were rejected by the court and it was seen that the system of sale with wholesalers was a device to avoid excise duty, a method which is legally permissible, but which if that must be always kept within the eyes of the court. The court did what it did eventually in this case.[22] (mcdowell and co v. commercial tax officer, AIR 1986 SC 649)

Retrospective Effect of taxing: The clear and unambiguous language of which must be shown the intention to Impose a tax upon the subject. However, there is a principle that a tax cannot be levied or collected except by authority of law does not encompass the further proposition that taxes cannot be levied retrospectively under the Indian Constitution. When there is retroactive effect in a fiscal law, as soon as it is passed by a competent legislature, a tax levied

under the same becomes a tax by authority of the law and that it would be absolutely not invalid because it is retrospective.[23] A Fiscal statute, more particularly, in the light of period of limitation to be strictly construed: A law of limitation is enacted which is intended to give finality and certainty to legal proceedings and in avoidance of the risk of litigation on parties. When proceedings have under the existing law passed finality beyond which ordinary rules exclude future unforeseen limitation, the proceedings cannot be reopened enforceable by proceedings which had attained finality only save in case the pharmaceutical itself holds the field whereby finality is upset where proceedings which was already concluded and finality come as provided otherwise even in full payment of 'loans'. Nor can a procedural provision be said to have given retrospectivity greater than its express mention, even while in the absence of a contrary intendment expressed therein; to confer retrospective validity on the tax authorities with the aim of enabling the same to finalize tax assessments or opening up liability which has become time barred.[24]

Constitutional Validity:

Taxing Legislation and its Effect on Fundamental Rights and Other Constitutional Provisions:

The policy of tax evasion itself, though it is so effected, might in some cases result in some hardship in some cases, and it shall not on the face of it make a taxing statute an impediment on the freedom under article 19(1)(g). Just so long as law is of process of abstraction from the generality of cases and reflects the highest common factor. However, a tax is excessive or would tend to lead to the downfall of profits or earnings of the people of the burden per se and without anymore; does not, of itself, and without more, constitute a violation of rights. (federation of hotel and restaurant v. the generality of cases and reflects the highest common factor.). Even then excessiveness of a tax or even circumstances that the imposition might lean towards the detioration of the said persons income of the persons of the incidence does not on the face of it, and without more, comes to bring the violation of rights.[25]

Now-a-days, if such a taxing statute is divisible in its nature and partly within and partly outside the constitution, it can be declared wholly ultra vires. Separability entails both separability in enforcement and the principle of severability shall be applicable to all taxing statutes. In order to make a tax valid, it must be within the

competence of the legislature which makes it and second is for a public purpose and thirdly that it shall not infract the fundamental right assured by the constitution.[26]

Generally stated when authority to tax at such rate as the court may specify without the legislature fixing any maximum is conferred, it is invalid upon the grounds of excessive delegation if no other guideline is indicated for when tax is put into effect for the betterment of the government, no implied limitation is quantum of tax which can be inferred because the govt's needs are unlimited.

Meanwhile, power to collect tax is given to a municipal corporation, without specifying the maximum , the taxing power can be sustained on the ground that such Municipal Corporation has power to tax to the extent necessary for the performance of its functions. (It is just like a bus service that transports you from one point to another — you can falsely use one leg to wear you to the other.[27]

However, while fiscal statutes must conform to art. 14 general principles of exclusion and inclusion do not quite apply with the same rigour to statutes concerning taxation. This field is a matter of a larger discretion for the legislature.[28]

In Cibattul Ltd v. The Court saw to that the charging section may be ultra vires but the procedural section may be held ultra vires if it takes away from the constitutional competence of the legislature that enacted it.[29]

Conclusion:

The lack of precision in language drafting fiscal statutes by legislative draftsmen requires improvement. If strict construction were the rule, imprecise or ambiguous language use in the legislative enterprise could in the wake of strict construction rule, cause the collapse of the entire legislative enterprise. The strict reading of the charging section is taken together with the liberal reading of exemption provisions. The reason for this is that such exemptions provision is akin to a beneficent provision, for which the rule in general applies to such provision also when such provision is in tax statute. In recent history however, the courts have adopted a strict scrutiny of exemptions provisions, which is the same as courts apply to charging sections. The reason is that a liberal read or interpretation of the exemptions provisions will bring down the revenues; can be realised and such a reduction will affect the welfare

of the population at large. And for that reason these judges have considered pro revenue interpretations to be social welfare interpretations. As a consequence strict rule of construction has been applied to interpret taxing statutes in favor of revenue as well as of the assesse.

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Critical Study of Consent and Accountability in AI-Assisted Medical Procedures in India with EU

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Abstract

This research paper talks about use of artificial intelligence (AI) in the medical industry particularly through AI-assisted medical procedures like surgeries and diagnostics and introduces complex challenges in ensuring informed consent and accountability. The researcher studies the current legal frameworks in India and the extent in addressing consent and liability in medical decision-making, this analysis will also address the fact that whether AI if used in the very same medical procedure would result in a better outcome ?. Existing Indian medical laws, designed for human-led healthcare, lack clear provisions for decisions made by AI, causing regulatory gaps that may endanger patient autonomy and safety. This paper explores these gaps through qualitative analysis of case laws, principles of medical ethics, regulatory frameworks, significant consent protocols, and healthcare accountability standards. The findings in this paper indicate that the current legal landscape in India does not sufficiently define the process of obtaining informed consent in AI-assisted procedures, nor does it delineate liability in the event of medical error involving AI systems. The paper aims to protect patient rights and foster trust in AI-assisted healthcare by proposing an evolved policy framework that clarifies accountability and ensures transparency. The paper also analyzes foreign legal frameworks, especially the European Union to understand how such standards can be implemented in India. The paper finally suggests a need to establish updated legal standards

and guidelines for AI in healthcare that can significantly advance patient autonomy and regulatory clarity.

Keywords *AI (Artificial Intelligence), Healthcare, Consent, Accountability*

Introduction

With digitalization invading various aspects of human life, access to personal data in banking, insurance, and healthcare is quick and effortless. This has caused an increase in interaction between AI and human beings. The utilization of AI in analysis, personalized treatments and diagnostics has led to the unfolding of Artificial Intelligence AI in Healthcare. In India healthcare is a consistent need. Indian Healthcare system consists of Medical and Health Prevention Services where the rearmost is delivered mainly through the government healthcare centers to the poor and economically weaker groups. Private healthcare on the other hand constitutes secondary and tertiary care providers where corporate hospital chains provide the latest medical facilities. Government and private healthcare have AI applications for diagnostics and telemediation. AI has made its presence in the medical and healthcare industry in India are hospital information and diagnostic management systems. Informed consent is an integral part of ethical medical practice, and this also ensures that the patient has right to self-determination and autonomy. This involves providing comprehensive information on procedures, the risks, the alternatives, the benefits, and the patient's right to refuse the procedure. While globally recognized, the approaches and standards in India and the EU are quite different. In India, due to socioeconomic and cultural flaws, there is a question on the validity of consent[1].In the EU, a more standardized legal framework ensures valid consent. AI in the healthcare industry should not deter from the fact of patient autonomy, accountability, and trust in the healthcare system.

Introduction of AI in medicine

AI is currently creating a revolution in the field of diagnosis, patient management and personalized treatments. This evolution improves patient care by decreasing human-made errors in clinical practices. In 1985, a conference was held in Dartmouth College, New Hampshire, USA "Artificial Intelligence" was invented. In 1997. AI in the field of medicine in 1970 where a research program produced *MYCIN*, a backward chaining system powered under AI to

recognize bacteria causing severe infections such as meningitis, and personalized treatment will be presented to the patient. The growth of research only continued and in 1979 the Association of Artificial Intelligence (AAAI) was formed till the 1990's.[2] Development of AI in India is still at the initial stage and the government has taken a few measures to ensure the integration of AI i.e., creation of AI task force, NITI Ayog, etc. AI was profoundly found during the pandemic era i.e., COVID-19. During this time, preliminary screening of the patients of COVID-19, containment of the virus, enforcing quarantine etc

Why is the concept of consent important for medical procedures?

Consent is important in medical ethics to guarantee that patients know the risks, benefits, and other available treatments. However, the traditional method of gaining consent becomes tougher when AI is integrated. Patients are unknown of complex algorithms of AI and any decision they considers when they haven't understood the treatment cannot be valid consent. Due to the absence of concrete legal provisions in India, accountability of such procedures is very tough to establish. In the EU (European Union), established steps to address accountability is introduced in the EU Artificial Intelligence Act (2021). Here AI used in healthcare is mentioned to be elevated risk and the regulation stresses that the developers on the patients go through the documents provided thoroughly before consenting. When it comes to India for the same, issues of consent are required as knowledge on health is exceptionally low.

AI-assisted medical procedures in India

India has the world's 7th largest economy and the 3rd purchasing power parity, Indian economy is a fast-growing major economy[3]. Historically, the Indian healthcare system always had persistent systematic inefficiency and lack of data systems resulting in limited access to medical resources, especially in rural area. The nation faces a huge problem the medical se concerning services availability because of the doctor-patient ratio. In India, per 100,000 people have only 64 doctors available to them whereas globally 150 doctors are at hand for per 100,000. [4]In the policy NITI Aayog, applied AI in primary care for the early detection of diabetes complications, for diagnostic accuracy for retina specialists. Portable screening devices such as *3Nethra* helped eye specialists for early

detection during eye screening. Tata Medical Healthcare Centre merged with the Indian Institute of Technology launched one of the first de-identified cancer image bank for comprehensive imaging. This is the first in the nation based on high-level AI-based tools for imaging and detecting bio marks in people to improve the outcome of cancer research. [5]

India's stand today as a nation in the aspect of the integration of AI into medical procedures

Digitalization of the health records of every citizen is a strategic move by the government to leverage technology in the healthcare industry. This sector has estimated profit of 1.6 billion dollars by 2025 for the use of AI in the Indian medical industry and the compounded annual growth rate of 40.5% from 2020 to 2025[6]. Telemedicine gained attention in India during COVID-19. This allowed patients to consult doctors via an AI-operated platform creating a trend in India to optimize the operational use of AI technologies in healthcare for the best quality of results and lowers complications. [7]A study conducted in Iran it was found that 34% of the participants had vague knowledge of medical procedures[8]. This led to knowing that the patient's awareness on the modes of technological intervention is important.[9]

What are the Challenges faced in the Indian healthcare system for the integration of AI into the field of healthcare?

In India, AI promises to revolutionize the healthcare industry to improve patient care and ensure accurate faster operations. Many healthcare facilities lack the foundational infrastructure for the integration of AI. AI tools will help every part of the nation. [10]When the integration of AI takes place, patient data that may include sensitive information could be misused and cause discrimination. India has a regulatory framework i.e., Digital Personal Data Protection Act, 2023[11] guidelines as to how the data should be protected but in the same framework lacks the data related to the healthcare of the individuals and the regulation for such a gap is still pending. This makes society vulnerable to cyberattacks in the healthcare sector like the attack in AIIMS Delhi in 2022 where the hacker demanded a ransom of two hundred crore rupees via bitcoin[12]. This can lead to different hospitals having a variety of formats and systems to record the patient treatment which will cause inconsistency and incomplete data which can be unreliable.[13] There

is also a need to ensure that the healthcare professionals are familiar with the AI applications and that it not intimidating for them. This can only happen through proper training. [14]The fear of change is irreplaceable and if not trained it will affect the accuracy and efficiency of AI in comparison to the judgment made by a human[15]

The Regulations Made by European Union (EU) For the Integration Of AI Into Medical Procedures

The European Union is known for strong regulatory frameworks, and it has taken a stance to ensure that the use of AI is legal and ethical. The EU focuses on patient safety, accountability, and the preservation of patient information. [16]The application of AI in the healthcare industry is said to fall under the category of high risk[17], It is said so as absolute transparency, risk management will be inadequate[18]. Under the General Data Protection Regulation (GDPR), a foundation for protection of Data in AI applications has [19]been laid down where the principles of the regulation talks about data minimization, and the limitation of AI. The regulation also ensures that the patient data is anonymous and will safeguard individual privacy . [20]Lastly, the Medical Device Regulation Act[21] talks about the classification of AI into medical devices and that these medical devices must adhere to the MDR and that it must solely focus on safety, performance, and surveillance of the patient post-treatment,

What difference in the regulation for AI in the healthcare sector is seen in India and the EU?

Integration of AI into the medical sector in India came in much later than that in the EU. While establishing regulatory frameworks; EU provided the European Union AI Act for establishing legal frameworks for AI in healthcare GDPR and MDR[22] for regulating AI technologies in the medical field. The existing laws in India like the Information Technology Act 2000[23], Medical Device Rules 2017[24], Personal Data Protection Bill, [25]etc are the frameworks for technology but sector-specific regulations are lacking. While in the EU the GDPR forms stringent Data protection standards to emphasize performed procedure is with the consent of the patients, the data obtained is secured and clear transparency in the system. The framework makes it compulsory for organizations that using technology must comply to the privacy laws that is established to protect the patient's personal information or data.

Where in India the DPDP[26] was established to enhance the data protection procedure however not as concrete as the GDPR. The opaqueness in the healthcare-specific provisions is very evident as it does not fulfil the need for healthcare-related data protection and talks about personal health protection [27]which in one way can be said to include the person's healthcare records but regulation need to specify as to the protection provided to them to ensure such protection. When medical procedures are said to be ethical, so does the integration of AI into the medical field. The EU's well-defined guidelines ensures that the AI aligns with human and societal needs and that the organizations are required to ensure that the AI is developed and released to society[28].

Consent in AI-Assisted Medical Procedures

In healthcare, consent is one of the cornerstones of ethical and legal procedures. This also ensures that the patient is aware of the procedure that will be conducted with the alternatives, risks and benefits. This will allow the patient to have their right to self-determination and to make decisions for the procedures that would be conducted[29]. Consent can be segregated into

1. ***Expressed consent*** – This consent is given verbally or in writing. In many medical procedures express consent is required especially for invasive procedures but it is also said that a mere signature in consent forms does not amount it a valid consent. In the Indian landmark judgment of *Samira Kohli v. Dr Prabha Manchanda*[30], the Indian Supreme Court ruled that express consent must be taken for surgical procedures and giving consent to one procedure does not mean that consent is given for another procedure.
2. ***Implied consent*** – Here the behaviour or demeanour of the patient it is inferred that the patient has given their consent for the procedure. For example, when we are sick and we visit the hospital where the doctor recommends some test, until and unless we expressively say that we do not comply with the procedure it seems that we are granting consent to the medical procedures.
3. ***Informed Consent*** – This consent is said to be the star in medical ethics. Medical practitioners can gain proper consent from the patient after explaining them the purpose, the risk and benefits, the alternatives.[31]

The Indian Supreme Court emphasized that real consent aligns with the doctor's duty to disclose all about the procedures and to use prevalent medical practices than sticking to the international models of gaining consent due to the socio-dynamic society in India. [32]Here the Supreme Court also said that the doctors take an active role ensuring that the patients, who the procedure is going to be performed have understood the procedure's pros and cons . [33]

Challenges faces while obtaining the valid form of consent.

Researchers forget that the theory of valid or real consent is good if it is in theory but reality says otherwise. One of the barriers is the socio-economic dynamic in the country especially the Economically Backward class, who are illiterate, struggle to understand the procedure, not only the financial part but also the literacy part of it as if the citizens are not literate and even though they have understood the procedure are afraid to consent to such a procedure and would rather die than go ahead with the procedure. Due to the diversity in the nation, there are cultural barriers present too. Even if the nation establishes a standardized consent-gaining procedure inconsistencies would affect the quality of the consent. Post-COVID-19 commercialization of healthcare has caused ineffective ways of gaining consent with doctors often undersharing for incentives causing problems in the patient's rights.

Accountability in AI-Assisted Medical Procedure

Accountability in healthcare majorly concerns identification of the stakeholders and their obligation, responsibilities, and liabilities. When it comes to AI in healthcare the same will be applied to the liabilities of the stakeholders involved in the manufacturing to the deployment of such technology[34],

1. ***Developers of the technology*** – The person who have developed the technology would be responsible for creating such a system that can provide a result that is efficient, and transparent. These developers must ensure that the algorithm of the AI is well trained, and a diverse set of databases is fed into the system to ensure the result was tested before and it not newly established by the technology. Before deploying such a technology, the technology must be evaluated, and it must be validated by various medical professionals to ensure the reliability of the technology in the medical field. The developers must also follow the general guidelines provided.

Regarding India, there is no legal framework that can regulate these developers of AI technology. Even after deployment, there needs to be continuous monitoring of the AI system and updation to prevent possible risks.

2. ***Healthcare professionals* –** They are important when deploying such a technology comes into place. The successful use of this AI technology is done by healthcare professionals. Before usage of such an AI, they need to interpret the working of such a technology and ensure that the technology's recommendation will align with the needs and the problems of the patient's needs. These professionals must be adequately trained before the usage of such technology must ensure that they are aware of the limitations of such a technology. Healthcare professionals can be held accountable if they do not inform the patient that the technology is part of their treatment and that there are potential risks and benefits.[35].
3. ***The Organizations That Use Such a Technology-*** Majorly the implementation of such technology will be done by the hospitals. These institutions are responsible for integrating AI into medical procedures for a smooth workflow and to use it appropriately. When the integration of such technology occurs, the organizations should ensure that the sensitive data of the patients is also protected[36]. In India, general protection of data is done under Data protection bills such as the IT Act [37]and the DPDP[38] globally, GDPR in the EU[39].
4. ***The regulatory authorities* –** In India AI is still developing, and multiple authorities are established to ensure the safe and secure use of AI in the healthcare industry. If the integration of AI is successful, the Ministry of Health and Family Affairs will certify medical devices powered by AI[40]. These devices would come under the Medical Devices Rules, 2017[41]. The efficient deployment of AI specific guidelines like the ones provided in the NITI Ayog. Certification like validation of the AI and evaluation of the Safety measures ensuring transparency in the system[42]. Regulatory authorities are important to ensure that periodic audits occur to ensure that the AI systems comply safely and with golden standards, protect individual data to ensure privacy etc. [43]

How Can There Be Successful Implementation of AI Into Medical Procedures in India

With a target of a developed India with a turnover of a GDP to 30 trillion Dollars by 2047, and with a current rank of 134 out of 193 countries, integration of AI into the nation is important[44]. The notable integrations seen currently are when the medical sector uses AI-assisted medical devices for knee replacement or diagnostics in radiology etc. The use of AI in real-time data or 3D imaging quicker rehab and minimize the invasion by precision etc. Even with the promise that AI holds if not implemented properly then there can be ethical transgression and conflict with patient autonomy.[45] If this AI is used more frequently, liability may arise due to the errors caused by the technology being poorly defined. To have an accurate diagnosis and personalized treatment, there needs to be a development that can refine the disease prediction model and help in the development of an electronic health record for better predictive analysis for chronic disease management. [46]

In conclusion to this paper, the integration of AI into medical procedures seems promising but if this is not backed up with ethical and legal guidelines then there will technical challenges. One of the main concerns is the consent procedure to ensuring that the patient's consent for this procedure is valid and real and that the accountability of the medical procedure also would be informed to the patient. Implementation such frameworks can help India as a nation to address concerns like privacy and the responsibilities of the stakeholders involved in these medical procedures. This can help India to fusing the infrastructural problems in the country and the updated training programmes can help the medical practitioners trust in this integration. I find AI to hold immense power to bring a revolution in the Indian medical sector but to make it successful, it is essential to prioritize the regulations in specificity and to ensure that there is a seamless collaboration between the private and the public healthcare.

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Artificial Intelligence Innovation, Ethical Governance and Risk Mitigation

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Abstract

Artificial intelligence is everywhere and yet not really anywhere as a part of modern society. It creates a lot of critical questions about its impacts also it needs some frames of effective regulation. Therefore, this paper looks at the pivotal role that regulatory approaches will play in tipping the risks and challenges of AI against the responsible exploitation of its potential. Thus, the study calls attention to the serious need for a risk-based approach where high-risk applications have more stringent regulation while lower-risk industries are provided with flexible strategies. This balance will ensure the growth of AI in ways for the progress and safety of individuals. The paper also underlines the need of holistically empirical research studies to decipher the proposed regulatory approaches in the aspect of anti-discrimination, privacy and fairness among others. It also identifies the gap in existing literature with regard to the examination of AI's societal impacts on vulnerable communities - a critical aspect to design proper regulations. This study intends to contribute in the current discourse about AI governance by underlining the importance of building universally accepted regulatory standards that can address the ethical challenges of AI systems and promote responsible innovation.

Keywords : Artificial Intelligence, Regulation, Governance of AI , Risks, Benefits of AI

Introduction

Artificial Intelligence, often conceived as the pinnacle of human innovation ushers a lot more than just human intellect to excel even where that is not possible. As one might expect visionaries such as John McCarthy coined AI as the science of making machines do things that typically require human intelligence.

Unfortunately, this broad and constantly evolving definition still poses a big problem in formulating general regulatory mechanisms. This report intends to critically observe AI's transformational impact across sectors critique prevailing models of risk and propose novel frameworks that help bridge governance gaps. The scope is rather broad deliberately including AI applications across various fields considerations on ethics and the regulatory mechanisms needed to mitigate its risks while growing benefits.

Advantages Of Artificial Intelligence

Artificial Intelligence (AI) is revolutionizing industries through innovation, efficiency, and decision-making processes. As an area of academic study, the potential of AI in transforming operations calls for in-depth study to understand its multifaceted benefits across different domains.

Industrial Applications and Efficiency and Automation

The industrial relevance of AI lies in its ability to automate repetitive and time-consuming tasks. Within high-precision sectors such as manufacturing the use of AI-powered robots minimizes errors optimizes workflow and increases productivity. These systems revolutionize industries because they address inefficiencies that improve overall operational standards.[1] Similarly, AI-driven chatbots in customer service accelerate response times, improve accuracy and enable organizations to allocate human resources to complex problem-solving tasks.[2] These advancements underline AI's role in elevating productivity and operational resilience.

Advancing Data-Driven Decision-Making

The analytics capabilities of AI help find hidden patterns in large data, thus enabling informed decision-making across various fields. In finance predictive algorithms use historical and realtime data to forecast the market trends, thus making it an optimal investment strategy. AI is accelerating drug discovery identifying therapeutic targets, and making pharmaceutical research more efficient.[3] These developments point toward the fact that AI has the capability to transform data into actionable insights which is the gap between the theoretical potential and practical application.

Innovations in Healthcare

The integration of AI into healthcare is revolutionizing diagnostics, treatment planning and patient management. AI-based diagnostic tools improve the medical imaging analysis. the role of

AI in early cancer detection noting that it significantly improves survival rates and reduces the cost of treatment.[4] AI also supports personalized medicine through treatment protocols tailored to individual patient data and telemedicine platforms enable healthcare delivery at a distance thus increasing access and reducing the resource burden. These innovations demonstrate the critical role of AI in enhancing healthcare systems around the world.

Transforming Education Through Personalization

AI is transforming the field of education by making learning adaptive and personalized. Through the analysis of student data AI generates customized content delivery modes tailored to individual learning needs and paces. AI tools such as virtual labs offer hands-on experience in simulated settings.[5] This fills the theoretical-practical knowledge gap so that education adapts to meet the requirements of the digital era.

Sustainability and Environmental Influence

AI's applications include sustainability measures, optimizing resource use and minimizing the impacts on the environment. AI can be used in optimizing wind energy distribution and ensuring efficient renewable energy systems.[6] Secondly, AI is an additive in smart urban planning, precision agriculture, and developing sustainable development practices. Some of these applications reflect intricacy between technological improvement and ecological stewardship towards sustainability.

Difficulty In Defining Ai

Human intelligence thus explained variedly by emphasizing a plethora of human characteristics including consciousness, self-awareness, language use, the capability to learn, the capability to abstract, the capability to adapt and the capabilty to reason. Artificial Intelligence is the machine intelligence. John McCarthy, the computer scientist who originated the name "Al," suggested that intelligence in machines may be more than just replicating human intelligence.

At present there is no universal definition of AI (artificial intelligence), not even among experts.[7] John McCarthy, the computer scientist who first used the term AI, described it as the field involving creating smart machines, particularly smart computer programs. He thought that machines could exhibit exceptional intelligences that exceed human abilities and that AI (artificial

intelligence) was not confined to imitating human intellect. This definition highlights the potential for AI to go beyond human capabilities and to exhibit intelligent behaviour in its own right.

Other definitions of AI have also been proposed. Steven Omohundro, a major scientist in the field characterized Al as a system with goals that it strives to achieve through action in the world.[8]. Stuart Russell and Peter Norvig, on the other hand preferred the rational agent approach, where machines operate autonomously, perceive their environment, adapt to change, and pursue the best-expected outcome.[9] These definitions emphasize the importance of autonomy, adaptability and goal-directed behaviour in AI systems.

However, the above-mentioned definitions have led to the usage of the term AI in a very general sense such that it covers a very broad range of programs, algorithms and network used in various applications. There are some AI uses that include qualifiers like "narrow AI" or "strong AI" however, there is a lack of clarity for defining these terms which is confusing to define AI.

The goal-oriented approach to defining AI focuses on machines that work to achieve goals, which is also problematic as it replaces one difficult term with another. Thus, it is decisive to define AI to regulate.

Risks Associated With Artificial Intelligence (AI)

Presently, Artificial Intelligence (AI) has augmented the lives of human beings in various domains but due to the limitations and risks posed by Artificial Intelligence, there is a requisite for its efficient regulation.

The risks or threats associated with AI are as:

Inherent Bias In AI

A common misconception is that AI, being a type of computer system, is consistently impartial. Nevertheless, this is undeniably untrue. AI is just as neutral as the data and the humans that instruct the computers. Therefore, if the information is inaccurate, impartial, or prejudiced in any way the AI produced will also be biased systems can perpetuate and amplify existing biases, leading to discriminatory outcomes. Detecting bias can be challenging, and if not addressed it can become ingrained in algorithmic systems.[10] The loss incurred from the negative outcomes is highly affected by discrimination in the AI systems.[11] Bias issues such as these are

unlikely to provoke a regulatory response if they are dealt with in Al system design.

Loss Of Privacy

Privacy is an important aspect of the live of individuals. Privacy is considered an essential human right and therefore means the right to be kept secret from unauthorised people or access[12] The collection of personal data is stored in the systems of AI that breaches the privacy of individuals. To eradicate the concern of personal data being stored in the systems of AI can be achieved through the establishment of accountable incorporated with transparency. Therefore, the enhanced regulation systems should be well equipped with mechanisms that prevent the misuse of personal data that consequently protects the interest of individuals.

Insufficient Accountability

The accountability discussion focuses on establishing systems to ensure individuals developing or using AI systems adhere to these systems. This includes assigning responsibilities to make parties legally bound to emulate ethics and ensuring AI functions ethically and meets standards.

No Transparency

Transparency is crucial in conversations, highlighting the need for algorithms and AI decisionmaking to be transparent. This is accomplished by providing users and stakeholders with insight into the inner workings of AI systems, the variables influencing their choices and the end results. Clear AI increases trust in the system and raises understanding about the opaque nature of some advanced AI systems

Inherent Problems Of Artificial Intelligence (Ai) That Poses An Hindrance To Its Regulation.

The progress and use of AI systems have sparked notable regulatory worries. Many challenges offered by AI arise from the nature of the problem, which is extremely unexpected, intractable, and nonlinear, making it difficult to regulate.

The Problem Of Pacing

In the presence of the rapidly advancing pace of innovation supervision have fallen behind.[13]

The fast progress have created a disparity between innovation and regulation causing the "pacing problem," where AI technologies are advancing at a pace that surpass regulatory frameworks. Uncertain

temperament of AI tosses as a challenge in its governance. Hence, the recognition of AI challenges are decisive in the establishment of its efficient regulation.

Information Asymmetry

The Collingridge Dilemma poses a critical challenge by exposing the problem of information assymetry. The distance between the developers and regulators due to stringent knowledge of AI often fails to foresee the consequence. The Collingridge Dilemma calls attention to the challenge of pre-emptive intervention in regulation.[14] To overcome this problem the establishment of sandboxes are suggested.. These sandboxes offer an opportunity to stimulate innovation while mitigating risks and allowing regulators to better grasp the technology's implications before wider use. As AI continues to evolve and permeate new sectors, the balance between innovation and responsible regulation will require an integrated approach that accounts for AI's unique characteristics, such as its opacity, diffusion, and discretionary power in decision-making processes.[15]

No Ethical Consideration

The complex ethical issues stemming from the opacity of AI technology create major regulatory hurdles. International cooperation and the implementation of "soft law" measures, like ethical guidelines and voluntary industry norms, can help tackle this problem. Such mechanisms are not legally binding, they can only serve as a transitional method to provide a sense of norms for agreement until there is legal regulation[16].The distinction between law and ethics which is longstanding characreistic of Utilitarianism. [17]The ethical feature is attributed to AI suggesting the inclusion in AI regulation frameworks. The flexibility of Soft Law mechanisms makes it well equipped for the regulation of AI.[18] Companies can self-regulate through voluntary codes of conduct, which establish ethical standards that match with social norms and regulatory systems.[19] In fast-evolving areas such as AI, conventional regulatory agencies may find it challenging to uphold rigorous standards, making soft law an important asset. Voluntary codes of conduct enable companies to self-regulate by setting ethical standards in line with societal values and regulatory frameworks.[18]

These non-binding principles have had significant influence, promoting fairness, transparency, and accountability in AI

development across Europe and beyond. Such frameworks demonstrate the importance of ethical oversight in maintaining public trust while fostering technological advancement. Soft law is a useful instrument for governing AI because of its flexibility, which allows technical requirements to change as technology does.

Regualtion Delay

The reason for the regulatory delay in AI is usually because of the intricacy , there is requirement to implement new laws. Industries face uncertainty when they are unsure about future regulatory actions, leading to the possibility of either hindering innovation or allowing uncontrolled expansion. A proposal for this problem is to implement adaptive governance models, where regulations change in response to technological advancements. These models may contain sunset clauses which require the regular evaluation and modification of laws according to the present technology landscape.[19] Traditional regulation's reactive character, disruptive innovation consistently confronts regulatory methods.[20]

Features To Be Incorporated In Efficient Ai Regulation

The divergence between regulations and the rate of technology development results in a regulatory void that is detrimental to the innovation capacity of AI and the risk associated with its application. Consequently, there has been a slowly growing tendency to call for a new concentrated and adaptive authority or a regulatory body. technologies and their constant development.

Risk-Based Artificial Intelligence Regulation Application

Prioritizing risk-based approaches and concentrating on regulating high-risk applications while implementing a more flexible strategy for lower-risk industries are essential components of a well-designed regulatory framework for AI.

Risk evaluations include both the possibility and degree of harm, including possible implications on vulnerable groups. While AI is not without risks, when used properly it may help minimize a wide range of risks in daily life.

Risk-based frameworks usually entail the following sequence: the first step of the regulator involves identifying the level and type of risks that it can accept; the second one; the regulator has to carry out some form of risk analysis and determine the probability of occurrence of the risk; the third step; the regulator evaluates the risk and categorizes the regulated entities based on this risk as high,

medium and low; the fourth and final step is the allocating of resources based on the level of risk that the regulator.[21] This process not only informs regulators but also helps refine AI risk profiles through ongoing feedback loops

The necessity for regulatory organizations to analyse and classify the hazards posed by AI is critical, particularly as AI evolves. Artificial intelligence may act as a driving force for society improvement provided an effective AI regulatory mechanism is established, and the related risks are carefully addressed. A risk-based approach ensures safety irrespective of any limitation on lower-risk applications.[22]

To Ensure Accountability

A critical aspect of AI regulation is establishing clear rules for responsibility and liability. Determining accountability for AI systems' outcomes whether it lies with developers, users, or other parties is complex particularly in autonomous decision-making systems. Traditional legal frameworks often struggle to attribute accountability in these contexts.[23] Therefore, accountability frameworks need to acknowledge parties' responsibility to handle risks and implement required measures if a mistake occurs.[24]

The Presence Of Transparency Within In Artificial Intelligence Systems

Transparency is the quality of being see-through or open without any hidden information.[25] Furthermore, where there are failures of transparency in AI systems known in the industry as the black box dilemma or issue are innumerable central regulatory concerns. Namely, the trustworthiness of AI systems implies that their functioning can be explained to developers, regulators and users and their decision-making can be traced. This is even more pertinent where the AI system is used in high-risk applications like; health care, legal services and finance where the non-justifiability of the AI decisions has the potential to infringe on the rights and safety of individuals.

Explainable AI (XAI) is standard for constructing coding models aimed at global understanding.[26] The faith between AI developers and society is a requisite. XAI helps regulators ensure adherence of AI with ethical norms. [27]In light of the opaque nature and possible effect of AI systems, the proposed AI policy should include explicit transparency responsibilities so that impacted

persons and innovators are enabled to utilize and trust AI technologies

Therefore**,** the proposed framework for AI regulation emphasizes flexibility, transparency, and ethical governance. It advocates for a balanced approach that fosters innovation while protecting societal interests. Regulatory mechanisms such as nudging and soft law, coupled with risk-based regulation, transparency demands, and ethical oversight, provide a robust structure for AI governance. This integrated approach is essential for ensuring that AI continues to drive technological advancement while addressing its potential risks responsibly.

Conclusion

In light of the balance between innovation and regulation, there is a need to develop frameworks that will foster AI development while also observing the following facets of the AI models; accountability, transparency, and protection of society. Challenges of regulating artificial intelligence are hence twofold because of discretion, diffusion and operational secrecy of AI sources which do not fit the conventional forms of regulation. holds enormous promise to revolutionize industries and uplift quality of life, but its adoption must be done responsibly. The ethical dilemma issues, economic disruption and security vulnerabilities all point toward comprehensive governance. By embedding the ethics principle and fostering global cooperation, society can navigate the AI complexities and ensure that all the benefits of this technology are enjoyed by all. It will only be possible by following a balanced approach rooted in inclusivity and transparency so that humanity can reap the transformative power of AI responsibly and sustainably.

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Unveiling Corruption: The Impact of Whistleblower Protections on Corporate Governance in India

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Abstract

Corporate Governance is an essential component in establishing an ethical system of managing organizations with high levels of business integrity. Whistleblowing refers to informing competent authorities about wrongdoing within any organization, it has a central function in upholding principles of corporate governance. The Indian government values whistleblowing and it has provided the legal framework for protecting whistleblowers. The following paper focuses on the effects of whistleblowing protections concerning corporate governance systems in India. Corporate governance is a foundation of business ethics while providing companies 'adherence to the law and meeting society's needs. This paper argues that the most important mechanism of good corporate governance is the whistleblower, those who act as watchful guardians against corruption, fraud and other unethical practices. This research has explored the evolution and current framework by focusing on The Whistleblower Protection Act, of 2014, and other mechanisms in corporate governance.

By analysing whistleblower protection, it assesses the effectiveness in encouraging disclosure, combating corruption, and promoting a culture of ethical conduct while also exploring the challenges whistleblowers face, such as lack of anonymity, fear of retaliation, and no financial rewards to those who expose corruption within the organisation. The study highlights the need for reforms in the existing legislature to strengthen whistleblower protection in India. The recommendations 'provided include expanding the scope of the act, introducing of anonymity provision, and providing sufficient support and incentives for whistleblowers. India can create

a more transparent and accountable for good corporate governance where corruption and unethical practices are eradicated.

Keywords Whistleblower, Whistleblowing, Corporate, Organisation, Governance

Introduction

Corporate governance refers to a system through which companies are directed and controlled. The board of directors is responsible for managing the company. The shareholder's role in this governance is to appoint the directors and the auditors to ensure that the company has appropriate governance in place. [1]Corporate governance is crucial for maintaining transparency and accountability within the organizations. It provides a framework for effective decision-making and planning. Corporate governance develops a sense of trust amongst employees and stakeholders. It allows entities to adapt to changing market conditions ethically. It promotes ethical behaviour and ensures compliance with the law. [2]

In *State of M.P. & Ors. Vs. Ram Singh (2000)*[3], the Supreme Court stated that "*Corruption is termed as a plague which is not only contagious but if not controlled, spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS, being incurable*". Whistleblowing serves as a powerful tool to combat corruption, expose unethical practices and hold individuals accountable to maintain transparency and integrity in the nation. According to Merriam-Webster, a whistleblower reveals something covert and informs others. In other words, they are employees of a company or government agency who disclose information to the public or some higher authority about any wrongdoing, which could be in any form. According to ILO, Whistleblowing is reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by the employees[4]. Whistleblowing is an important mechanism within corporate governance and one of the most important tools in good corporate governance. It is a powerful mechanism for employees and insiders to report unlawful and unethical practices within their organization. They help in identifying various forms of misconduct such as fraud and corruption.[5]

On 24th August 1999, The Central Vigilance Commission (CVC) requested the Law Commission to draft a bill that encouraged

and protected honest persons who exposed corrupt practices in the public sector.

In 2001, the 179th Report of the Law Commission of India recommended passing a law protecting whistleblowers to prevent corruption. They also recommended an act through a bill on "Public Interest Disclosure and Protection of Informers Bill, 2002" and submitted a report on the same[6]. However, it was the Satyendra Dubey Case that brought national attention to the issue. Mr. Satyendra Dubey, an IIT Kanpur graduate was a project engineer of the National Highway Authority of India (NHAI). He had exposed several cases of corrupt practices in his letter to Mr. Atal Bihar Vajpayee the then Prime Minister of India. On November 27, 2003, he was shot in front of Circuit House in Gaya when he was returning home from Varanasi[7]

Another case that brought the same attention was the case of Shanmugam Manjunath. He was an Indian Oil Corporation officer and was murdered in Uttar Pradesh after sealing a petrol outlet that was selling tainted fuel. The government was accused of corruption and theft. A senior police officer was also sent to a psychiatric facility. Shanmugam Manjunath led an unannounced raid a month later to inspect the fuel quality. He was shot six times in 2005 and the body was discovered in the back of his car seat. The Trial Court found all eight defendants guilty with one being sentenced to death and the other seven receiving life sentences. The High Court overturned the death sentence for one of the defendants and acquitted two other defendants. The Supreme Court upheld the trial court's decision and life sentences were given to six individuals in 2015. [8]

In response to these cases, the Government of India brought "The Public Interest Disclosure and Protection of Informers (PIDIPI) Resolution". The CVC was assigned as the "Designated Agency" to receive complaints regarding the wrongdoing of the employees of local as well as the Central Government. In 2007, The Second Administrative Reforms Commission (ARC) recommended that there needs to be legislation to shield whistleblowers from retribution. [9]India is also a signatory to the UN Convention against Corruption which includes specific provisions for protecting whistleblowers.[10] The government introduced a draft bill to formalise Whistleblower protection in 2010 which was subsequently

called The Whistleblower Protection Bill, 2011. The Bill was passed in 2011 in the Lok Sabha and in 2014 the bill was passed in Rajya Sabha replacing the PIDPI resolution.[11]

Overview Of The Whistleblower Protection Act, 2014

The Preamble of the Act highlights the purpose of the Act. It states that the Whistleblower Protection Act,2014 is "An act to establish a mechanism to receive complaints relating to disclosure on any allegation of corruption or wilful misuse of power or wilful misuse of discretion against any public servant and to inquire or cause an inquiry into such disclosure and to provide adequate safeguards against victimisation of the person making such complaint and for matter connected therewith and incidental thereto". Section 4 of the act provides for concrete requirements of Public Interest Disclosure. The essential requirements under the section are 1) Any person (including a public servant or anyone) can make a public interest Disclosure before the Competent Authority as defined in Section 3(b). 2) The complaint needs to be received by the authority. 3) Every disclosure shall be made in good faith. 4) Every disclosure shall be made in writing. The act also provides a time duration of 7 years to report any wrongdoing from the date of occurrence of the instance. Section 11 of the act lays down protection from victimization of the complainant. The Central Government has to ensure that no citizen or public servant disclosed under the act is victimized under any proceedings and also take necessary steps to prevent the same. Any individual who negligently reveals the identity of the whistleblower will be imprisoned for 3 years and has to pay a fine of Rs. 50000. If any person makes a false complaint knowingly, they will be imprisoned for 2 years and a fine of Rs. 30000. [12]However, one essential point to note is that the act applies to the public sector only. It does not apply to the private sector.

Other Mechanisms Of Whistleblowing In India

Section 177 of the Companies Act, 2013[13] states that every publicly listed company need to establish a vigil mechanism for the directors and employees to report any fraud or misappropriation in the prescribed manner. The Companies Act, 2013 has several provisions that cover the mechanism for inquiry, investigation, and inspection under Chapter XIV regulations expands the detection of improper actions by an external party, allowing the party to serve as

an important external informant. Section 208 of the law provides authority to an Inspector (excluding the registrar) to review records and suggest further investigation in cases of uncertainty. Section 210 gives power to the Central Government to conduct an investigation based on recommendations from either the registrar or inspector, for public interest, or upon receiving notification of a special resolution passed by the company. Similarly, Section 211 has led to the establishment of the Special Fraud Investigation Office (SFIO) with the authority to detain individuals for any fraud-related offenses. Before, Auditors did not have any authority to detect fraud and their main role was to report any fraudulent activities. Now, it is one of their main responsibilities to expose any wrongdoing and report it directly to the Central Government or relevant authorities.[14]

In 2003, SEBI amended corporate governance principles as incorporated in the standard listing agreement. It then required that organisations own a Whistleblowing policy. These mechanisms make it possible for employees to report any irregularity within the organization because these issues will be reported to the management and some necessary actions taken. These amendments were incorporated into Clause 49 of the Listing Agreement in 2003. The SEBI has substituted the concept of the listing agreement and now the guidelines are present in SEBI (Listing Obligation and Disclosure requirement), Regulation 18 of 2015[15]. It is the understanding between the listed companies and the stock exchanges. As provided in the listing rules, these companies are required to develop their Whistleblowing policy. [16]

Analysis

The Whistleblower Protection Act has emerged as an important legislative tool in promoting organizational accountability and transparency. It has a significant impact on corporate governance by creating a more ethical and transparent business environment.

Firstly, The Act encourages the reporting of financial fraud, unethical practices and regulatory violations. It promotes transparency within the organization. It ensures that irregularities come to the management's notice which can address the issues more effectively. Secondly, the act strengthens accountability by assuring employees to hold the higher management especially the board of directors responsible for their actions. Thirdly, the Whistleblower

Protection Act serves as a deterrent to unethical behaviour. This creates safe channels which discourage employees and leaders from engaging in wrongful acts. It creates an ethical culture where companies are likely to cultivate a culture of integrity and ethics is valued.[17] However, there are several shortcomings of the whistleblower protection,2014. The ambit of this act is only limited to the public sector and does not apply to private entities at all. Whistleblower protection policies, companies have failed to adopt a proper policy as there is no substantial legislation. There is a need for efficient policies to curtail corruption and prevent illegal activities. There is an urgent need to include the private sector as well. The private sector contributes a lot to the Indian economy and any misconduct in the private sector does affect the people at large. The companies that have whistleblowing policies are mostly progressive and there is no proper effect. [18]Several Whistleblowing policies of various companies state that any complaint must be filed to someone who is either a part of the organisation or someone who is in the immediate hierarchy.

The higher judiciary is excluded from the ambit of the act which means that the complaints against them cannot be entertained. The competent authority cannot grant Suo Moto protection for the person making the disclosure. There needs to be an application for protection to safeguard complainants against victimisation. There is also a limitation period set of 7 years but in many cases, the wrongful act may come to knowledge after 7 years. Section 17 states the punishment of imprisonment of up to 2 years imposed for frivolous or *malafide* complaints. This discourages whistleblowers because it creates a fear of imprisonment amongst the Whistleblower from legislation that was enacted to protect them. [19]The Act does not allow anonymous complaints to be submitted and if there are any anonymous complaints received, those complaints will not be investigated. Not every employee is comfortable with sharing their details because of the retaliation they could face. Most of the laws in the USA allow for anonymity. They can file it to the concerned authority through an attorney and the authority can proceed with the investigation while keeping the identity of the whistleblower anonymous.[20]

By law, any whistleblower complaint must be filed with Competent authority within the meaning of the law. The competent

authority differs in relation to the person against whom the complaint is lodged. However, the competent authority under the law is usually a senior official in the same hierarchy as the person against whom the complaint is made. This negates the neutrality of the investigation and the findings reached are usually biased. The law does not envisage the provision of rewards and Whistleblower after successfully investigating his claims. However, the Stock Exchange of India (Prohibition of Insider Trading) Regulations, 2015 provides for the payment of discretionary awards with a reward of 10% of the cash amount. sanctions. However, this reward is limited to Rs. 10 crores.[21] The SEBI mandates Whistleblower policies for listed companies under SEBI (Listing and disclosure requirements) LODR, 2015. The enforcement and compliance are inconsistent and companies often treat whistleblowers as a formality since many companies' whistleblowing policies lack an ethical culture.[22] The individual faces the consequence of whistleblowing as they often expose themselves to high personal risk. There is no personal benefit as it is for the public good only. They put their lives in danger. Due to inadequate legislation, whistleblowers fear they will not be able to prove and serious action can be taken against them and will have to face retaliation.

Recommendations

The act has a lot of potential and is promising however several reforms have to be implemented. These policies are important as they will aim at the discovery of any form of wrongdoing and prohibit employees from any kind of malpractice.

The preamble of the act excludes the private sector. Many countries and organizations have adopted different policies, rules and guidelines to safeguard both the public and the private sector as well. The 2nd Administrative Reform Commission provided several recommendations and one of the most important ones was to include the private sector and prescribe penalties for the same. However, these recommendations were not included.[23] The OECD Anti-corruption Bribery Recommendation calls for all parties to make sure that whistleblower protection is for both public and private employees. [24]

The Public Interest Disclosure Act 1998[25] applies to both the public and private sectors. The term "worker" defines both sectors. The term worker is interpreted through different judgements. For

instance, in *Clyde & Co LLP and another v Bates van Winkelhof (2014) UKSC 32,* the UK Supreme Court stated that LLP partnerships are included in the meaning of the term workers. For India to achieve good corporate governance, the private sector must be also included in the ambit of the ambit of the legislation. [26]Another important recommendation is to establish a mechanism for receiving complaints anonymously. The act does not even consider anonymous cases to be investigated. The United States has 3 legislation supporting whistleblowers, The Whistleblower Protection Act, of 1989 [28]The Sarbanes-Oxley Act of 2002[27] and The False Claims Act[29]. The Sarbanes-Oxley Act was enacted for the sole purpose of combating corporate criminal fraud and to strengthen corporate accountability. The provisions of the act required that audit committees of public corporations establish a procedure for a" confidential, anonymous submission by employees of complaints regarding internal accounting controls or auditing matters". The Sarbanes-Oxley Act also provides severe punishment for retaliation, anyone found guilty will be punished with 10 years of prison. India's legislation also needs severe punishment to deter corporations from committing any sort of wrongdoing. [30]

The act does not provide any financial rewards for whistleblowers who put their lives at stake by exposing corruption to the public. the Securities Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 provides for monetary rewards. [30]However, it is at their discretion. Hence not everyone is entitled to such rewards.

Conclusion

Corporate governance is the backbone of promoting transparency, accountability and ethical behaviour. Whistleblowing is a crucial component of corporate governance, as it exposes fraud, corruption, and unethical practices and ensures accountability. Good corporate governance is the most essential for businesses that aim to establish long-term relationships with their stakeholders and shareholders. According to the UK Whistleblowing Commission, 2013 "*Effective whistleblowing arrangements are a key part of good governance. A healthy and open culture is one where people are encouraged to speak out, confident that they can do so without adverse repercussions, confident that they will be listened to, and confident that appropriate action will be taken. This is to the benefit*

of organizations, individuals, and society as a whole"[31] The statement of the Commission highlighted the need for a strong whistleblowing framework for ensuring good corporate governance. The world over the past few years has witnessed several cases like Satyendra Dubey and Shanmugam Manjunath. These cases emphasize the need for the protection of whistle-blowers from retaliation. The role of encouraging whistleblowing lies with both law and companies. Companies need to adopt stronger whistleblowing policies.

The Whistleblower Protection Act, of 2014 needs to be extended to the private sector as well. The private sector needs to be regulated considering the current advancement in the private sector and the number of citizens that contribute that work in the sector. Several countries have such as the USA and the UK, their laws extended to the private sector as well.[32] Whistleblowers are governance actors who can better facilitate corporate compliance thus whistleblowing could be made a duty imposed by individual firms on their employees and other agents. [33]

Whistleblower plays a very important role in combating corruption and maladministration. They work in the same organization and know better however they fear retaliation. If strong legislation is granted, the competent authority will be able to get more information regarding any wrongdoing. Whistle-blowers who act in good faith serve the core values of public service and confront instances of power abuse. They ensure loyalty to the country over individuals, political parties, or governments. The right of employees to expose corruption or maladministration is attached to whistle-blower protection.[34]

Whistleblowing mechanisms in India have laid down the groundwork but reforms are necessary to strengthen the legislation. The mechanism in India needs to enhance its scope and align with global standards for building transparent, accountable and good governance in India.

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‘Evaluating Legal and Ethical Implication of Euthanasia in India: A Comparative Study’

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Abstract

Euthanasia or mercy killing, is one of the most debated issues of the world that brings controversy across legal, ethical, and socio-cultural levels. This issue is notably important in India due to the landmark judgments passed by the Hon’ble Supreme Court of India in the case, namely, **Aruna Shanbaug v. Union of India (2011)**[1] and **Common Cause v. Union of India (2018)**[2], recognising passive euthanasia with harsh conditions while continuing to abolish active euthanasia. This research breaks down the legal and ethical dimensions of euthanasia in India. It sets side by side the regulation thereof in that country vis-a-vis countries such as Holland, Belgium, and Canada, where euthanasia has been legalised with reasonable restrictions. The research applies an interdisciplinary approach by combining doctrinal legal analysis with a socio-ethical study. It examines the rulings, statutes, and proposed laws by Indian courts to discuss the fact that views on euthanasia from the Indian legal system are changing. Philosophical theories such as utilitarianism, deontology, and virtue ethics will be combined with religious and cultural attitudes very prevalent in Indian society for this purpose. It is interesting to contrast this with more liberal frameworks followed in countries where euthanasia is tolerated and compare the differences in the principle of societal attitudes underlying such different policies. It examines the nature of the influence of individual autonomy, the sanctity of life, and the state's duty to protect vulnerable sections brought about by policy differences. An intense focus is maintained on measures adopted by such jurisdictions in the prevention of abuse and securing voluntary

consent for valuable lessons in policies being drafted in India. It thus suggests that although India's current position on passive euthanasia may seem just to the social cause, the unclearness of the law and unawareness in the public still prove major challenges. The further complex questions arising with euthanasia include a probable misuse of this situation and emotional stress among the professionals involved and those who care for them.

Keywords: Medical Ethics, Human Rights, End of Life Care, Legal Framework, Comparison of Legal Studies, Euthanasia.

Introduction

Both the legality and morality under the lens of the Indian perspective need to be analyzed within the context of the international scenario on Euthanasia. It is the act of killing when it takes place intending to end a life so that pain may go from that life, and by its very action, euthanasia is an internationally controversial issue touching on legislation, morality, and culture. In India, this already painful topic becomes all the more agonizing, with all the different cultural, religious, and ethical paradigms putting their weight on public thought and related legislation. Euthanasia or mercy killing is controversial enough to make a colourful case, yet it tends to be extremely tangled up with law, ethics, and society all around the world. The India City cases, Aruna Shanbaug v. Union of India, 2011, and Common Cause v. Union of India, 2018, have thrust into the headlines the entire euthanasia debate in India. This research paper examines the legal framework that protects euthanasia in India and weighs the ethical consequences of such a framework through comparative analysis using the lenses of places that have permitted or outlawed euthanasia. Although euthanasia, or mercy killing, raises significant legal and ethical issues for India, the complex mixtures of cultural, religious, and legal factors within the society colour such discourses. The evaluation of legal and ethical implications concerning euthanasia may also be conducted concerning comparisons with Canada, where euthanasia is legal under certain circumstances. It also would include some significant judgments passed by the judiciary in India regarding the ethical issues involved and the social attitudes toward them as well as possibilities of legislative reforms regarding the same. It is a very debatable issue at this time, making wander profoundly into the issues of morality and individual rights versus social values.

Euthanasia from the Greek roots refers to good and dying is dying a good death, but what good death may mean hasn't entirely been made clearer as cultures, religions, and legal systems all refract the perception through which a given individual judges it. The Indian attempt at drawing passive euthanasia legality most resembles trying to strike a balance between liberty and social norms. In many respects, suicide attempts have always been termed a crime under Section 309 of the Indian Penal Code, and that fact reflects a moral viewpoint that places the value of life above personal autonomy. However, the passing of the Mental Healthcare Act of 2017 initiated a slow change in the attitudes of the public toward options at the end of life by removing the criminal provisions concerning attempted suicide by a mentally ill person. Talk about euthanasia hit the summit when the Supreme Court recognized passive euthanasia, after the landmark Aruna Shanbaung case, and through their landmark ruling of 2018, by permitting living wills under severely restricted conditions. This paper will be more egalitarianism vis-a-vis some of the shortcomings in policy and practice with constant reference to religious spiritual and cultural sentiments. It aims to create the scope for a much more comprehensive healing environment for euthanasia in India by borrowing ideas from the countries of the Netherlands and Canada.

Legal Framework of Euthanasia in India

By extremely careful handling, passive euthanasia has legalized a situation where life-sustaining treatments are stopped, allowing nature to take its course with a person, in India. The landmark court judgment in Aruna Shanbaug v is that Passive euthanasia has been legalized. Looking at the status of the Union of India, which was delivered in 2011 subject to very stringent supervision by courts. This final solidifying is the Supreme Court ruling from 2018 in Common Cause v. It was a Union of India that validated the right to a dignified death and its validation as encapsulated within the Indian Constitution in Article 21 (Right to Life) and legalised the practice of passive euthanasia. Active euthanasia the intentional killing remains illegal and punishable under IPCs 302 (murder) and 304 (culpable homicide not amounting to murder). They say the Indian legal system has two ways or types of euthanasia: active and passive… Active euthanasia is the

termination of another person's life intentionally under section 302 and section 309 of the Indian Penal Code.

The Indian legal system makes a distinction between active euthanasia and passive euthanasia… to be more precise **active euthanasia** is a termination of another person's life intentionally, as per the Indian Penal Code under section 302 and section 309. By its ruling in the case entitled Common Cause v. Union of India, the Supreme Court recognised the right to die with dignity as an extension of the right to life as enunciated under Article 21 of the Constitution. The court permitted **passive euthanasia** subject to the availability of a legally valid "living will" or judicial sanction, in cases where the patient was incapable of independent decision-making. The research article "Euthanasia: An Indian Perspective"[4]. In this research, euthanasia was studied in India in all its aspects - medical, ethical and legal. It addressed physician-assisted suicide. This research chose to take the case of Aruna Shanbaug to try and examine the so-called 'act' that caused the country to go into a storm of discussion on legalization.

They were discussing here in 1849-50 about a female with incidence, and trying to self-sedate the pain to give assisted care to those with terminal cancer. As could be expected, people in PVS argue against a painless death, including a painful one because suffering could be another reason someone would prefer to die with pain. Therefore, the legalization of passive euthanasia in India becomes a very critical and complex concern that this study would specifically set out to cover i.e. in terms of the anxiety provided by the law and dignity aimed at addressing.

The right to life is an application of it for a person whose prognosis is such that their life would only be suffering. The right to die with dignity has positive ethical content in this respect as unlike the right to die unnaturally, it is legitimate. "Aruna Ramchandra Shanbaug v. Passive euthanasia is recognized legally by the Union of India but only for very few people with terminal conditions or chronically cared for kind people[5].

Thus, the legalization of passive euthanasia in India becomes a very essential and multi-faceted issue that this study shall specifically endeavour to address i.e. in terms of the angst posed by the law and the decency sought to be meted out. As applied to a person whose prognosis is such that his life would be suffering, it is

prohibited from starving him. In this respect, the right to die with dignity has a positive ethical content, since contrary to the right to die unnaturally— it is valid. Union of India Aruna Ramchandra Shanbaug v. Passive euthanasia is however only legally accepted in India and only for a select few terminal conditions or chronically cared for gentle persons.

Thus, this paper sought to conduct a thorough examination of the issue of euthanasia, as it is particularly concerned concerning Nigeria. It will explore the legal, sociological and ethical entities Kemi Anthony Emina[5] has to deal with it. From all moral considerations bringing some relief to the terminally ill, and allowing their entourage to exit the world gracefully the paper is not about the premeditated killing of a person. He believes everyone personally ought to live, but, in principle, he opposes euthanasia only in some situations. In some countries, this term is only a research term, which is scientifically defined, but is energetically opposed for ethical reasons by official laws of the land; in others, the act of euthanasia will be recognized as legal, providing it takes the shape of a law agreeable to the course of life. The legalization of euthanasia has itself been put above all other aspects by the author as it affects citizens' beliefs and values including acceptance of the laws and supervision of thymine. But one has to tread carefully on the politically charged question of potential abuse of mentally ill patients — particularly since euthanasia legislation will place the economically — or otherwise — most vulnerable among them under pressure from society and will subsequently instrumentalize the right to die. Generally, Indian euthanasia laws have been developed through the interpretations of the judgements instead of through legislative measures. Shanbaug survived a rough beating, spending more than 40 years in a persistent vegetative state, and that became a cause célèbre in the realm of euthanasia, with the Supreme Court deciding that passive euthanasia could proceed in certain cases and in doing so provided a legal compass for discontinuing life support for terminally ill patients or those who were truly comatose. AihaIndia though all these developments is yet to legalize active euthanasia. It needs to be noted that active and passive euthanasia are two different things; active euthanasia is when we end the life of a patient by taking deliberate actions while passive euthanasia is when life-sustaining treatment is withdrawn.

Ethical Consideration in India

Judicial interpretations rather than lawmaking have been a key determinant of Indian euthanasia laws. Aruna Shanbaug 2011 was a landmark case that shaped the legal framework in that respect. Shanbaug suffered a brutal assault and remained in a persistent vegetative state for more than 40 years before becoming a focus for euthanasia and the Supreme Court ruled that passive euthanasia was to be allowed under certain conditions which meant that those legally end life support for terminally ill or those who are irreversibly comatose. All such developments have taken place but active euthanasia is illegal in India. In addition, it is important to realize that active euthanasia and passive euthanasia are two different ways in which a person's life is ended; active euthanasia occurs when a person makes a deliberate choice to end a life in a patient, and passive euthanasia means withdrawing life-sustaining treatments. Chris Abakare tried to elaborate on the legal, social and ethical angles of the topic of euthanasia, which is what this research paper is about. Among the most significant findings were. It encourages us to consider why it logically permits euthanasia addictively to be useful, but not otherwise, compared to abortion. Euthanasia, which would comfort in context it checks, is the question of what prevents it from being allowed by law like abortion. Human rights and suffering: Abakare said 'they (people) have a right to life'; but that the situation is fraught with ethical dilemmas, under the guise of euthanasia. Euthanasia is neither purely a narrowed paradigmatic instance but transcends to broader social issues and affects policymakers. It also touches on the legalization issue inherent in the paper: it contends that the legalization of euthanasia will probably be accompanied by misuse. And he was putting that forward as the danger. The ethical burden that physicians face in caring for terminal patients, and 'killing'/'silencing' healthy individuals. If euthanasia were allowed, people might someday in time come to accept life under questionable conditions. Local Views: The piece also referred to other countries in which euthanasia is de jure, as in Switzerland and the Netherlands, but relatively strictly regulated.

So that this practice would not become widespread, there would be persistent excruciating pains and undiagnosable illnesses at the end of the criteria[6]. India is a place where this has both a cultural

and a spiritual aspect. Religious people influence the perception of euthanasia. Life and death are part of the never-ending cycle of karmas, according to the predominant religion of Hindus. All such cycles are generally treated as abnormal, but with a few exceptions; perfected sages for instance follow Prayopavesa (sacred form of voluntary fasting till death). Islam has forbidden this because it goes against the will of the Almighty. Euthanasia is morally impermissible from a moral aspect in that the Quran is clear in placing a clear injunction that man alone is the only being with the right who be employed in creating and disposing of human life. Like Christianity, Christianity stands for life, but there are different views among denominations concerning the moral issues concerning suffering relief. Contrary to this, Immanuel Kant's deontological ethics (which maintains that life has an intrinsic value and that it can thus not be used for an end) find euthanasia objectionable. Because these questions are so obviously visible, family connections come before individuality in India. Euthanasia decisions are by patient consent and involve extended family members whose views may have been influenced by either social norms or cultural practices. It is profoundly theoretical and quite often, personal moral issues about euthanasia. For this one should be able to choose death to escape extreme suffering, especially in cases involving a person with terminal illness whose sickness has an underrated quality of life. This perspective finds its way into the ontological dimension.

Comparative Analysis with International Practices

In Belgium and the Netherlands, physician-assisted suicide (PAS) and euthanasia are allowed with the patient's explicit consent as both suffer or are predicted to suffer intolerable suffering. Canadian lawmakers first legalized medical assistance in dying (MAID) in 2016, after which amendments in 2019 allowed people with certain mental health conditions to seek that service. However, most U.S. states, and the United Kingdom in general, severely punish PAS and active euthanasia, while allowing only passive euthanasia. The Indian position is in between these two, and their approach is crafty and based on cultural and ethical factors. Understanding the protocols in countries where euthanasia would be legally performed; e.g. the Netherlands, Belgium and Canada: Belgium and Netherlands Informed consent, terminal illness and unbearable pain are conditions under which there may be both active

and passive euthanasia. We are concerned with having very very strong legal protections and very strong ethical oversight for the application. Under Canada's Medical Assistance in Dying (MAiD) program, patients with life-ending, severe and untreatable illnesses are offered options when deciding on end-of-life options. These all fit within what autonomy provides. Canada, The ruling of the Supreme Court in Carter v. is Canada's legalisation of Medical assistance in dying in 2016. Canada. The difference with the Netherlands is that MAiD is only available in Canada to those with severe, intractable conditions and the latest amendments have first allowed those treatments to those suffering from both mental and physical illness. Canada may have a model for this country in its interest in interprofessional medical team engagement and informed consent from patients. For instance, such things as putting mental health evaluations into the euthanasia process would eliminate fears that people would be forced into decisions they did or didn't know the implications of.

Aspect	India	Canada
Legal Status	Passive Euthanasia is Legalised; Active Euthanasia is still Illegal	Both Active and Passive are Legal under specific conditions
Landmark Cases	Aruna Shanbaug (2011); Common Causes (2018)	Carter v. Canada (2015)[6]
Eligibility Criteria	Terminal Illness or Permanent Vegetative State	Serious Medical Condition causing enduring suffering.
Role Of Healthcare Providers	Limited to Passive Involvement; Active is Illegal.	Direct involvement is permitted under MAID[7].

Challenges

Empirical evidence hardly exists to address concerns regarding public perception of euthanasia or PAS in India. Another note is that little research is known on whether and how the socioeconomic status perceived by patients leads to the demand for

PAS. Finally, it is suggested that further assessments should be made of how effective palliative care is in reducing the suffering and tensions experienced by the terminally ill population. Passive euthanasia laws in India are some of the weak areas underlined in this paper which needs detailed discussion in the thematic area. This article essentially portrays varied ethical conflicts connected with the actual proposal of passive euthanasia towards the establishment of a positive contribution. Further research under the ethical umbrella is however needed to support public, integrated legal approaches and debates. There are a few common grounds on the so-called moral implications of these principles – although most cultures and religions that consider euthanasia have a common ground on the subject. Similar decisions were taken in the case of Aruna Ramchandra Shanbaug and Common Cause, even though in both of these cases the patients, caregivers, and families are facing long-term challenges. It can be a similar topic that entails how such decisions become the same when brought down to ground level, hence in practice when the case refers to the end-of-life choices, the professional opinions and stances on other things like passive euthanasia in India. Empirical research of this kind should be unlikely since presumably, nobody has imposed his view and attitude on such people. If euthanasia was legalized somewhere and there had been real abuse or misuse of it there, then there would be pragmatic research. Although there were a lot of discussions about slippery slope questions of the sort that involve slippery slope there is less evidence for it occurring. Still, such a deeper probe into the long-term effects of legalized euthanasia would be necessary to figure out what this anxiety was or to explain it. Also, there is very little in terms of analysis of social or religious components of euthanasia in the Republic of India[8].

The Way Forward or the Solutions to the Challenges

But the law on euthanasia has become tricky, not just about active or passive euthanasia. A lot of countries are doing these to legislate to try to fix the differences. Another interpretation of Article 21 of the Constitution is as a fundamental right, which will enable the Supreme Court to make active euthanasia, i.e. withdrawing treatment from a terminal patient from life support, permissible for the sake of the right of the patient to die with dignity[9]. Passive euthanasia was involved in the backbreaking

recognition of the right to passive euthanasia in such serious cases, for instance, in the Aruna Ramchandra Shanbaug case in terminally ill patients. Common Cause v. Union of India, 2011[10]. In the Union of India (2018)[11], the court draws lines to give effect to 'living wills' or advance directives for passive euthanasia. The advancement has, however, not legalized active euthanasia in India. However, the Supreme Court has repeatedly claimed that such a change would be unconstitutional and that these changes would not be made law through judicial interpretation. They would have to be made in legislation. The law is only for passive euthanasia in very severe cases, people terminally ill or persistently vegetative states. Furthermore, the patients have to furnish them with a living will indicating that their will is being honoured. Many solutions can be given to improve the current system and deal with ethical problems. It would have to be a set law with a clear and precise set definition as to what would make the law apply to circumstances. Such must be sealed against misuse and help vulnerable people while protecting individual rights. Such campaigns[12] precisely promote limited end-of-life rights, specifically explaining the very essence and role of advance directives to the people. Such programs assist in gaining an understanding of three issues and go on to inform people of the best health course to follow, which leads to other discussions within families and communities about euthanasia. Palliative care should work better than euthanasia as an option because it causes less suffering for patients with a terminal condition and hence less need for euthanasia for unbearable pain.

Conclusion

The traditional more socio-cultural climate in which the issue of euthanasia is embedded and takes rapid turns in India coupled with its inherent diversity makes it a most inquisitive issue in the healthcare interface in India. If India chooses to adopt ways that are international globally but will also tackle local issues, it might aim towards a normalized path between death and life - a strong framework: A kind of empathy with autonomy, and protection, against any abuse, to guide one safely through this troubled terrain. First, it is a very difficult subject in India — we don't have the freedom to live and the sanctity of life, we should have first the sanctity of life, and then the freedom to die with dignity. As India walks an ethical legal tautology, comparative insights along with

implementation challenges are drawn on as India navigates an ethical legal dilemma within the socio-cultural context. There is debate on the issue of euthanasia in India but broader contemplation, on the changing concept of human rights and the degrees of autonomy and compassion we strive for today, has given way to these. But legal decisions will have gone a long way to recognizing the right to die with dignity, and we must have wide legislative reforms on all forms of euthanasia. It first puts the issue straight away into the protection of individual autonomy from possible abuses and also provides possible paths ahead through a comparative study with Canada. While the social world debates the mode of life to its end, the same will need to be done concerning euthanasia: cover all angles because of the ethics involved, the worldview, and the level of respect for human dignity. The legal and moral aspects of euthanasia in India and Canada Have been analyzed and discussed in this paper with the help of important judicial pronouncements and emotional association with this issue has been thrown out. The call to introduce diverse aspects of health professionals, patients' rights activists' actions, and the entire society that is being engaged in the debate regarding the ethics and legality of euthanasia, is done in the introduction of the work because these debates are still occurring within and outside of the borders of India. Legislation of the future could be enlightened to respect the inherent rights of individuals yet safeguard vulnerable communities from abuse, and that will have to be argued for through being informed by the facts. Ultimately, the answer to this toe curler for India has to involve a mix of mercy and caution, whatever ends up being the framework out of which that answer emerges will have to balance individual choice with the requirements of all – including the wants – of India's economy and society.

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Re-Evaluating the Efficacy of Reservation Policy in India

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Abstract

Researcher in this paper deals with the reservation policy, mainly focusing on caste-based reservation which was introduced in the Indian constitution for upliftment and benefit of such socially and economically backward/ disadvantaged communities of society. Reservation Policy is a special law thus, their are people who both supported such policy and some were against such a policy. Supporters argued that such a policy was much needed to remove the barriers from society as it will bring inclusivity and remove the practice of superiority and inferiority from the society and will promote equality and feeling of oneness . Whereas people who are against such a policy argue that such a policy would not possibly be able to provide for such upliftment and development because there are clear circumstances that can be seen in history of special laws being misused by such a category only , This is known as " Creamy Layer". This research is based on government surveys and data available. The researcher also questions how such policy is benefiting and helping the economy to grow. The researcher here also deals with the involvement of other categories, like gender based, economical condition bases, tribals etc.,for reservation rather than just focusing on caste-based.

Keywords- Reservation, Creamy layer, Backward classes, reserved categories

Introduction

Caste-based reservations are a vital development intervention and justice mechanism in a democratic society[1]The main aim to introduce Reservation policy in India was to remove the caste barrier that was very prominently seen and followed in Hindu vedas. The main rationale behind the introduction of caste-based reservations in

1950 was not just redress of past discriminations but improvement in the representation of different sections of society itself at all important decision-making levels[2]. Thus, to benefit such economically and socially backward classes, in 1933 by a British Prime minister- Ramsay Macdonald[3]. Although the need and demand was initiated long back itself. We can trace the roots back in 1882 when William Hunter and Jyotirao Phule proposed the concept of caste-based reservation[4] and in 1932, Mahatma Gandhi and Dr. Ambedkar signed the Poona Pact, which provided reservations for the depressed classes known as "Dalits"[5]. After 1947, when India gained independence, the reservation policy initially provided reservation only to scheduled caste (SC), scheduled tribes (ST). In 1951, through the first Constitutional amendment, caste-based reservation was legalized[6]. The main aim for such reservation policy in India was to promote the sense of oneness and equality, Article 15(4) of IC provides the state and government with power to set aside seats for people of SC's (Scheduled Caste) and ST's (Scheduled Tribes) in government service sectors[7], Article-16(4) give power to the state and government to to set aside seats for people of backward classes in public employment sectors[8]Article-330-342 provides special provisions for particular classes of people in society.

Reservation in Educational Sectors

Main aim behind introducing Reservation policy in educational sectors in India was to ensure social justice by providing reservation which gives equal opportunities to such socially historically marginalized communities. The system aims to provide an equal level of the playing field by providing affirmative action for SCs, STs,OBCs, and economically weaker sections (EWS). As Reservation policy being a special law, has gone through many debates thus has been subject of extensive arguments, legal scrutiny, and social discourse.

Types of Reservations in Educational Sectors:

Scheduled Castes and Scheduled Tribes: Idea of providing Reservations for SCs and STs were introduced to correct historical injustices and ensure their participation in mainstream education. 15% of seats are reserved for SCs and 7.5% for STs[9]. This category is based on caste, which is a complex social hierarchy in India that has historically marginalized certain groups.

Other Backward Classes (OBC): OBCs are socially and educationally backward classes who have faced discrimination and exclusion. The reservation for OBCs is 27%[10]. This category is based on social and educational backwardness, which is determined through various criteria, including caste, occupation, and socio-economic status.

Economically Weaker Sections (EWS): The EWS reservation was introduced in 2019 to provide opportunities to economically disadvantaged individuals[11]who do not belong to SC, ST, or OBC categories. 10% of seats are reserved for EWS candidates. This category is based on annual family income and other economic criteria.

Persons with Disabilities (PWD): Reservations are also provided for individuals with disabilities to ensure their inclusion in higher education. The percentage of reservation for PWD varies depending on the category of disability.

Impact of Reservation policy in educational sector in India

There are both positive and negative impacts that can be seen after introducing Reservation policies in India's educational sector. Supporters argue that caste-based reservation policy have undeniably increased access to education for historically marginalized communities like Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs), who since historical times were denied opportunities due to caste-based discrimination[12]. This resulted in improving the social mobility and economic empowerment for these groups.Whereas , the critics of such reservation policy in the educational sector, argue that it can lead to a decline in overall academic standards, as seats are filled based on quotas rather than solely on merit[12]. The reservation for economically weaker sections (EWS) within the general category has been questioned for its potential to further fragment society.

Another concern is the "creamy layer" issue, where well-off individuals from such reserved categories get benefited out of such reservations, resulting in taking away the potential opportunities, that are available, from those who are in genuine need for such policy and are disadvantaged members of those groups[13]. Thus, even though such a policy is providing education to such backward classes, it is still a topic of debate because of corruption and misuse of it.

Reservation in Employment sector

Reservation in employment sectors in India is a very controversial and debatable issue. There have been continuous fighting over whether it should be enacted and at what percentage, many argue that the main need to introduce and continue the practice of reservation is to resolve historical social and economic inequalities faced by historically marginalized communities, while others, critics of such policy, call it a leading cause for negative consequences such as inefficiency, resentment, and even a decline in meritocracy.The meritocracy-level argument is that the reservation can cause a decline in it. The basic idea while selecting people for jobs is now based on their caste or tribe rather than their qualification which reduces the overall quality of the workforce as the ones who deserve more are not getting employed. Such disadvantages usually come across companies and the economy as a whole.

Reservation could also result in creating resentment among those who do not get it. This can bring about social divisions and hinder national unity.

Even though there are critics of such theory still there are evidence that shows these apprehensions. One study by the *Centre for "Monitoring Indian Economy"* revealed a decline in the productivity of public sector enterprises after the implementation of reservation policy[14]. Another study by the "*Indian Institute of Management Ahmedabad"* revealed that "reservation negatively affected the quality of education in India". [15]

Ultimately, the impact of reservation on employment sectors in India is complex and contested. There is no easy answer, and it is likely to continue debating for many years ahead. Some negative impacts of reservations in employment sectors of India can be:Decline in meritocracy: When people are selected for employment according to their caste or tribe rather than their merit/qualifications it starts to decline the quality of the general workforce and result in resentment amongst those not eligible for it,This can widen social compartments and affect national integration. Reservation breeds a sense of entitlement among the beneficiaries and a sense of victimhood among those who are not[16], Inefficiency: Reservation may lead to inefficiency in the system at

the workplace since people are recruited based on their caste or tribe rather than skills and competency[17]Decrease in the quality of education: Reservation can lead to a decrease in the quality of education because institutions lower their standards for meeting quotas.[18]

Even though reservation policy has been in debates and always faced challenges and questions, still It is a complex decision to see whether the government should go ahead and continue with such policy or go against reservation in employment sectors in India. There are tight arguments on either side, and the pros and cons should be carefully weighed upon before decision-making.

Creamy layer

The creamy layer concept in India's reservation policy main aim is to exclude relatively better-off individuals from those of the backward classes (OBCs)[19] from availing reservation benefits as they are already at a better condition than those who deserve it and are not uplifted as are not getting a chance to use such policy. The creamy layer concept was introduced by the Supreme Court of India in the Indra Sawhney case (1992)[20] to ensure that the benefit of reservation policy reaches to those only who are the disadvantaged sections of society and truly require such policy for their benefit and upliftment.

Creamy layer is determined on the basis of income earned and parental occupation,Those who have used reservation policy earlier to uplift themselves. The criterion is updated at periodic intervals on account of inflation and economic growth. Currently, a person earning more than ₹8 lakh per annum from families belonging to the OBC group are considered part of the creamy layer and are not eligible for benefits under this policy. [21]

The creamy layer concept has been a matter of debate and controversy. The argument is that it is an arbitrary and unfair criterion excluding deserving persons from availing the reservation benefits. It argues that not always is economic status a reliable indicator of social and educational backwardness[22].However, proponents of the creamy layer concept argue that it is necessary to prevent the misuse of reservation benefits by relatively well-off individuals. They feel that reservation benefits should be targeted at the most marginalized sections of society.

The creamy layer concept was applied to OBCs but not to SCs and STs. This is because the SCs and the STs are the most marginalized sections of society and their social and educational backwardness is very historical thus it will take a lot of time for them to overcome it.The creamy layer concept has greatly impacted the reservation policy in India. It has reduced the number of beneficiaries under reservation, especially among OBCs[23]. At the same time, however, it does guarantee that, before these benefits are claimed, only the desperately disadvantaged sections of society will benefit from reservation policies.Proponents of the creamy layer concept argue that it is necessary to prevent the misuse of reservation benefits by relatively well-off individuals. They feel that reservation benefits should be targeted at the most marginalized sections of society.

Also according to various issues regarding creamy layer, their are some more points raised by the Parliamentary Committee on Welfare of Other Backward Classes that are, that "*the existing income limit and the proposed income limit of rupees 10.5 lakhs is an unrealistic and unreasonable criteria to exclude the creamy layer for availing the reservations"*[24] and also observed "*that the reservations in various Departments of the Central Government have not even reached 16% as against the required quota of 27%"*[25]. Accordingly the report also expressed their unanimous "*opinion to enhance the income criteria to rupees 20 lakhs"*. They further stated that since "*the income criteria was first fixed in 1993, it has not been revised periodically as stipulated"*. Therefore, had the Government revised the income limit every three years in the interregnum least periods regularly, the income limit would have been at least rupees 20 lakhs by now[26]. This has gone against the interest of the OBCs. Keeping in view various factors such as:- the expenses in education of children, cost of living, etc., "they *expressed a desire to raise the income limit to rupees 20 lakhs"*. The Members who conducted the report also suggested that agricultural income should be done away with completely. "*The Creamy Layer under the Rule of Exclusion is applicable to holdings of irrigated land to more than 85% of the statutory ceiling area".*[27] This was resolved in 1993, but since then, the land holdings of the families were split up into various pieces, and their farming activities are no longer viable. Moreover, they all agreed that the current and previous MPs and MLAs should not be

included in the Creamy Layer. They also claimed that the election of an OBC candidate as MP or MLA does not automatically imply that the person has developed socially or academically. They have also requested that "*the creamy layer criteria, which the NCBC said be applied to salaried workers in all other industries, including private employment, as well as to staff of public sector undertakings, be re-examined*".

Why is there a need for re-evaluation of Reservation policy?

The Indian reservation policy was designed with the aim to work for upliftment of historically disadvantaged communities, and has been under intense debate and legal scrutiny for decades. Although it has undoubtedly benefited many disadvantaged groups and helped them for their upliftment still, its continuation and implication without critical reevaluation raises concerns about its effectiveness and potential unintended consequences. One of the critical arguments for re-evaluation is the need to ensure alignment with the contemporary realities of society and maintain the sense of equality. With fast changes in socio-economic conditions, in view of the reservation policy, within India, this is one of the most vital criteria because of which a policy may not meet the target in its current ambit and application. Some feel that it was stretched too far beyond the original purpose for which it was formulated, and this has introduced some unintended beneficiaries as well as created new dimensions of social division.

There are worries about the reservation's impact on meritocracy as well as the general quality of education and public services. Those who oppose the policy suggest that this kind of policy will lead to declining standards because institutions would look for ways to fulfill quotas instead of selecting students based on merit. This is going to have long-term effects on the country's competitiveness and development. Supreme court cases brought to the forefront a critical review of the reservation policy. The Supreme Court intervened and clarified constitutional validity, through several judgements regarding the different facets of the policy.. Cases such as Indra Sawhney v. Union of India (1992) and M. Nagaraj v. Union of India (2006)[28] established crucial principles, but, in turn, also gave rise to debates about the proportionate degree of permissible reservation and criteria for the identification of backward classes. Even though the policy of reservation remains a

highly sensitive and politically charged subject, it needs a balanced approach which is evidence-based. An adequate re-evaluation of the policy would involve aims, how its actual impact has been on different social groups, and potential alternatives to correct historical inequalities, involvement of other categories while giving reservation in different sectors.

Involvement of other reserved categories.

As caste-based discrimination remains a significant and crucial issue in India, it's important to recognize other categories of disadvantaged groups which exist in society and are unreserved and should be identified for affirmative action or reservation policies. A more inclusive approach could lead to a more equitable society.

	Rational	**Implication**
Economic Disadvantage	Economic disparities can severely limit access to education and opportunities, regardless of caste.	Implementing economic criteria for reservation could ensure that those from impoverished backgrounds, irrespective of caste, benefit from affirmative action. This could involve setting income thresholds or other socioeconomic indicators.
Gender Disadvantage:	Women, particularly in rural areas, face significant barriers to education, employment, and social participation.	Gender-based reservation can help address this imbalance, especially in fields where women are underrepresented. This can be implemented in educational institutions and government jobs.

Disability Disadvantage:	People with disabilities often face discrimination and limited opportunities due to societal barriers and lack of accessibility.	Reservation for people with disabilities can ensure their inclusion in education and employment. This could involve providing accommodations and support services to enable their participation.
Regional Disadvantage	Regions with historical underdevelopment and limited access to resources may require targeted interventions	Implementing regional quotas in educational institutions and government jobs could help address regional disparities. This will mainly be beneficial for areas with low literacy rates and limited infrastructure.
Indigenous Communities	Indigenous communities often face marginalization and discrimination, particularly in terms of land rights and cultural preservation.	Reservation for indigenous communities can help protect their rights and promote their cultural heritage. This could involve setting aside specific quotas in educational institutions and government jobs.

It's important to recognize such categories as well while giving reservations to make sure that policy is actually performing and fulfilling its aim i.e to provide upliftment to those who need it, and their are other categories apart from caste-based who actually need such policy.According to several case studies it was found out that people from a marginalized tribal and a rural background may face multiple forms of discrimination and to resolve such issue, it's important to provide reservation to them. Intersectionality should be considered when designing and implementing reservation policies.[29] In that way, through the expansion of the reservation policies, there will be a significant improvement that will involve the inclusion of the most critical acts. This expansion will include bringing on board

and actively seeking to fully identify more dejected groups that exist within the society. As a result of these efforts, India shall find itself in a favorable position to undergo substantial development and ultimately give birth to a society that is not only much more socially just but also far more economically fair. Such an approach will satisfactorily meet the urgent needs to address the historical injustices that have persisted for decades without a satisfactory resolution. Additionally, it plays a fundamentally important role in dealing with the critical issues related to social mobility, which is critical in strengthening the economy in general and allows the people living within that country to have a meaningful economic empowerment. This would, however, be paramount on the striking balance of affirmative actions and that of meritocracy so as not to allow diluted quality both of education as well as public services meant for consumption.

Conclusion: The Indian reservation policy, though was introduced with good intention and aim , in current times is not able to fulfill such aim and thus, resulted in catching a lot of questions and criticism regarding its validity and being biased and arbitrary. Such policy cannot be completely striked down from India because it has undoubtedly helped many and provide identity and upliftment to such backward communities,But still its effectiveness and potential drawbacks require a critical reevaluation. A balanced approach and checks are required to prevent the sense of biases and arbitrariness . This creates a requirement of re-examining goals and purpose of the policy, an impact on different social groups, and alternative methods through which historical inequalities can be addressed. Expanding reservations beyond caste based on economic disadvantages, gender, disability, regional disparities, and indigenous communities may help create an inclusive society. The overlaps between these categories must be looked at and should be considered while making amendments during policy formulation. The "creamy layer" concept requires strict actions and proper attention. Regularly updating the income limit and considering additional factors like agricultural income and political positions can ensure the policy truly reaches the most disadvantaged.Re-evaluation of the reservation policy is a very sensitive and complex issue. However, a data-driven and evidence-based approach, involving extensive public consultation and expert opinions, would result in a better path towards a more equitable and

just society for all Indian citizens. By making such changes and amendments this will not only address historical injustices but also promote social mobility and economic development for the nation as a whole.

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Domestic Violence Against Men In India

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Abstract-

This research paper intends to focus on male survivors of domestic violence, which is a fairly unspoken area in India. This research paper also tries to go against the strong root argument in society that victimhood in battered households is a woman's phenomenon. Studies are made on the lived realities of abuse among men, their legal and social recourse, and concrete recommendations for policy-level reform and social awareness. The research methodology involves an exhaustive survey of literature on male domestic violence survivors. It collects the insights of legal professionals, counselors, and mental health experts who are involved in these cases. Secondary sources of data relay case studies, legal records, and media reports, which help in ascertaining the many emotional, psychological, and legal challenges faced by these men. The approach of the study is through a gender-neutral lens, which looks at how cultural, social, and legal factors contribute to the silencing of male victimhood. The results disclose several challenges for male survivors: psychological suffering, social isolation, and lack of institutional support. The stigma of being laughed at and the norms identifying masculinity marry with culture to seal many from seeking help. Furthermore, the current legal framework in India largely neglects male victims of domestic violence and provides almost no recourse. Such conditions, however, have created greater awareness of the issue across certain segments of society. Modes of change in understanding and policy underscore that. Key recommendations emerging from this study include the introduction of guidelines for male victims of domestic violence.

Keywords- domestic violence, gender-neutral, gender-biased, men victimization, emotional disturbance, social stigma, domestic violence laws.

Introduction-

Domestic violence has been an issue since time immemorial. In India, it has been in the picture since ancient times when intimate partner violence was rampant; But in India, the discourse surrounding it always focused on female victims. The research paper addresses the question – Is domestic violence a lesser-explored phenomenon in India? Due to the history related to the topic it often neglects the experiences of men as victims. In India where patriarchy runs deep into the culture; to recognize males can be victims too is an obvious taboo; it gets overshadowed by the narrative of female victimization. In this paper the researcher hopes to discover why the topic is so unrecognized even though a part of it was always in the picture and with time it increased too. Domestic violence is the abuse that occurs within the four walls of the family; it could be physical/psychological/economic/sexual. Most of the existing literature on the topic indicated social stigma as the main reason for the abuses remaining unreported which again is compounded by almost no legal recognition and campaigns to raise voice against the situation. Society often resonates with men with a stronger personality with no emotional element/ lessor emotional than women and it disregards men can sometimes be victims too. However, a few researchers who were vigilant enough to address the topic as an issue prevalent today raised certain areas of question and gave this topic some light. The authors of existing literature highlighted the existence of less literature and underreporting as a limitation to research this topic. The significance of this research is to bring the underrated topic to the forefront and recognize that domestic violence against men in India is an existing real issue.

Legal Situation Related To Domestic Violence Against Men In India-

In India, despite certain data present on domestic violence against men humans prefer to ignore it because of their unwillingness to accept its existence. A study by health experts at the International Institute for Population Sciences (IIPS) in Mumbai highlights an intriguing trend: working women in India, particularly those earning cash and using mobile phones, may be more inclined

to engage in spousal violence against their husbands. Domestic violence is not gender-specific and, although it is a woman who is most frequently victimized, men can also be victims in this regard, and this can never be ignored. Unluckily, in the legal system, there's a bias against men; the aggressor label sticks to men, and such cases that involve them as victims often go unnoticed. In terms of gender-biased laws, they can only exacerbate the issue. As violence can affect anyone across genders, even though there is a difference in occurrences; it doesn't make someone's pain or challenges lesser or greater. It emphasizes how quickly changes are needed in laws towards being more gender-inclusive and fair this is sad because many of these laws, being biased toward women, have brought about so many false cases of rape or domestic violence against men. What is even worse is that these laws assume that men cannot be victims. For example, Section 498A of the Indian Penal Code places sole responsibility for domestic violence on men, without any clauses to address cases where women may be the perpetrators. S.498A of the Indian Penal Code, hereinafter IPC, says- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.[1] The above section is a very important provision related to domestic violence and it can be seen that the prejudice lies there where it is pre-assumed that the husband or husband's family will perform some cruelty on the wife and not vice-versa; No gender-neutral terms are also provided in this signifying legal-negligence. Moreover, some women use the above provision to frame false allegations about their partners for higher alumni, making them suffer serious legal consequences and defaming them in society. Under Sections 167 and 182 of the Indian Penal Code[2], a husband can take action against police officers who fail to register an FIR or support a wife in making false accusations. These sections empower husbands to hold officers accountable for neglecting their responsibilities or actively aiding in the fabrication of false complaints. Unlike women, men do not have any straightforward provisions for them like the Protection of Women from Domestic Violence Act, 2005 (PWDVA)[3]. One option men can explore is divorce under S.13 of the Hindu Marriage Act[4] where cruelty to the petitioner can be one of the grounds for divorce, another provision which is gender neutral and lets the

husband approach the district magistrate; The magistrate will review the complaint lodged along with pieces of evidence and witnesses to support the claim and then come to a conclusion is S.200 and S.153(3) of CRPC[5]. Under provisions related to grievous hurt, and voluntarily causing hurt in the Indian Penal Code men can find remedies when facing physical abuse in a domestic environment. However, the lack of a direct provision or separate legislation makes it difficult for men to reach a concrete solution to their problems and directs legal negligence towards the issue of domestic violence. Domestic violence cuts across all genders. It is therefore important to uphold a critical investigation to ensure that women are not wrongly accusing men. Such law protection and empowerment of women must ensure there are counters to prevent their law abuse cases against men. Men in domestic violence situations also need the right to apply for a divorce. [6]In the case of 'Hiralal P. Harsora v. Kusum Narottamdas Harsora' (2016)[7], "violence knows no gender," and the court accepted the fact that men can also be victimized by domestic violence. The judgment emphasized the need to adopt a gender-neutrality approach in tackling cases of domestic violence.

In his book 'Male Victims of Domestic Violence', Michael Kimmel[8] highlights domestic violence as a significant issue, emphasizing that men, too, can experience abuse from their wives or intimate partners. Over the years, extensive research and advocacy have contributed to new laws, updated police procedures, and advancements in medical and forensic research, which have improved support systems for male victims of domestic violence. The topic has recently been widely covered among activists, individuals, and organizations. After many years of research, most political activists today claim that domestic violence affects both men and women in almost equal proportions. While some research studies reveal that only women are victimized by abuse, over 100 empirical studies prove that both genders are victims of domestic violence. It fuels calls from male gender activists urging policymakers to consider gender-neutral approaches when drafting laws and policies relating to domestic violence, as the existing ones are largely built on frameworks that focus more on women.[9]

Comparison With International Perspective On Domestic Violence Against Men[10]

United States: In recent years, the United States has been able to make significant headway in acknowledging domestic violence among men. Though laws may differ from state to state, most have adopted gender-neutral frameworks. Organizations such as the National Domestic Violence Hotline can provide male survivors with tailored support and resources.

United Kingdom: With increasing awareness about domestic violence among men, the UK now shares a gender-neutral legal framework. Mankind Initiative is an organization that provides male victims with essential information and access to support services.

Canada: In Canada, laws have been gender-neutral, focusing on domestic violence, and the country has actively worked towards creating awareness for male victims. Organizations such as the Canadian Centre for Men and Families offer specialized support to men in need.

Australia: Australia realizes that men too are domestic violence victims, and the laws of the country are very gender-neutral. The role of advocacy groups like One in Three Campaign in spreading the message and asking for increased support for male victims has been significant

Sweden: Sweden has a gender-neutral approach towards the laws about domestic violence. The services and support are provided to the victims irrespective of gender. It is aimed at breaking the stereotypes and bringing male victims to report abuse.

Norway: Norwegian law has no gender bias when it comes to domestic violence. Organizations such as the Alternative to Violence organization ensure that all victims receive support and awareness just like men, so no victim is left behind.

Why Domestic Violence Cases Against Men Go Unreported And Effects Of It-

The main problem in India is that certain cases never get reported. Men fear the consequences if they report violence or defend themselves against fake cases reported against them. Despite its increase the reported cases are very less restricting the amount of literature due to societal stigma that sometimes questions their masculinity. More than being afraid of seeking help in situations like these men try to avoid the humiliation seeking help comes with. There are two pictures related to this – men in these cases play the role of villains themselves by categorizing men facing intimate

partner violence as weak and blemishing their reputation; Another side is pseudo-feminists disregarding the fact that male victims relating to domestic violence can exist too. In India, people like to live with their families; there is a fear of the voices of men who suffer at women's hands. Society will always play a big hand in perpetuating biased and stereotypical laws. People tend to believe that domestic violence occurs on the side of women only; they deny the fact that also men can be victims of DV. Thus, rarely spoken about in public.

Many men avoid psychological treatment once they have experienced violence and abuse primarily because of social stigma and the strong traditional identity attached to masculinity. Many men will view seeking help as being a sign of weakness or shame, as they have been trained to believe that it is necessary to endure abuse or deal with it alone because that is what being "a man" is all about. Being abused, especially at the hands of a woman, is humiliating and emasculating, so many men have learned to suffer in silence. Another major barrier is the stigma of being ridiculed and mocked, not only at the hands of peers but also at the hands of society or even professionals themselves.

The fear of being taken lightly or being branded a weakling is what keeps them from seeking the help they need to overcome domestic violence. Add to this the fact that most organizations in India are geared toward catering to women. These are mainly composed of women: the psychologists and counselors are typically women, some of whom might have experienced domestic violence themselves or been trained to focus on violence against women. It leaves male victims feeling largely unrepresented, misunderstood, or ignored, as the strategies for dealing with abuse are usually put in place thinking about women and failing to account for men's differences. There is also the problem of a lack of sensitivity and awareness in the legal and law enforcement systems. Most men fear that approaching the police or legal authorities will bring them ridicule, disbelief, or further humiliation instead of support. Systemic insensitivity discourages men from seeking justice or protection. This issue calls for immediate action to sensitize organizations, counselors, and law enforcement agencies about the existence of domestic violence against men. It is vital to foster an environment that would allow men to feel safe and empowered to

seek the help they need because it is a genuine and pressing problem that should be equipped with tools and training on how to respond effectively to male victims. Society has to change its attitude and able to open up spaces for men to talk without fear of stigmatism and judgment.[11]

Social norms related to masculinity impose upon men that they need to be tough, resilient, and emotionally suppressed, and create the mentality that "men do not cry." Societal pressures prevent the abuse of males from discussing such issues for fear of judgment and ridicule by peers and law enforcement, as well as the people in their community. They usually have the fear of losing someone with false charges of harassment within marriage or giving dowry, mainly due to the misconception in some people's minds against them. Section 498A of the Indian Penal Code is a vital part of Indian law-making relating to the crime of marital and harassment dowry. There is always the risk of abuse since it has caused injustice to several innocent lovers of this nation. Furthermore, the fear of suffering legal implications and being victimized by the stigma attached to the allegations prevents men from voicing their experiences with such abuses.[12]

What are the underlying causes and contributing factors of domestic violence against men in India?			
	Observed N	**Expected N**	**Residual**
Gender Norms and Culture Factors	19	40.0	-21.0
Lack of Awareness and Stigma	28	40.0	-12.0
Legal System Challenges	12	40.0	-28.0
Lack of Support Services	17	40.0	-23.0
Above all mentioned	124	40.0	84.0
Total	200		

A chi-square analysis examines the relationship between respondents about the "underlying causes and contributing factors of domestic violence against men in India. "The sample consisted of 200 participants. The expected frequencies are 40.0 each, based on the assumption of equal proportions of respondent's answers. The chi-square test statistic is significant, $?^2(1, N = 200) = 223.850$, d=4, $p < .000$, indicating the underlying causes and contributing factors of domestic violence against men in India. Therefore, reject the null hypothesis and accept the alternative hypothesis. So, most respondents agree on all the options of Gender Norms and Culture

Factors, Lack of Awareness and Stigma, Legal System Challenges, and Lack of Support Services.[13]

The above table is data, collected by the cited paper's author and it indicates that the above-mentioned factors in the table do contribute to causing domestic violence against men in India.

Suggestions For Way Forward Related To Handling The Issue-

Inclusive Policies Support policies on gender-inclusive consideration, considering and responding to male victim needs. Advocate for the appropriation of government resources and programming dedicated specifically to men and for the prevention of domestic violence. Education and Prevention: Educative modules on gender equality, healthy relationships, and conflict resolution to be integrated into school curricula and community programs will eventually form the basis for a long-term reduction in domestic violence as young people learn to get consent and communicate peacefully. Raise Public Awareness: Conduct public awareness campaigns to break societal norms and stereotypes that negate the existence of male victims of domestic violence. This would also create an educational and outreach work mechanism to break such myths and understandings and help men report abuse and seek help. Research and Data Collection: Invest in studies to collect reliable data on the prevalence and impact of domestic violence against men. Such research will help policymakers and organizations design evidence-based strategies for prevention, intervention, and support.[14] Advocating for male victims of domestic violence and developing a practice model to help social workers understand domestic violence against men and in return, they can create various awareness programs, and open NGOs or organizations solely governing the issue of domestic violence against men in India.

Conclusion-

Domestic violence against men remains a highly overlooked and under-researched problem in many societies. Traditional gender stereotypes have portrayed men as strong, dominant, and invulnerable; hence, it is tough to recognize them as potential victims. Most men have not reported abuse because society stigmatizes, mocks, and lacks proper legal or institutional support. In this way, their silence continues to keep them in the margins, leaving their emotional, psychological, and physical abuses untreated. A significant causative factor of this invisibility is cultural expectations

of masculinity, which does not encourage for men to express vulnerability. This social norm deters them from seeking such help and diminishes or denies their suffering. This puts male victims in a vicious cycle of disbelief and a lack of adequate support structures. Awareness will need to be raised to address the issue. Public awareness programs may address stereotypes and expose the scale of male victims of domestic violence. Similarly, drafting gender-inclusive laws may be the necessity to address gaps in current laws. The law mentioned above The Protection of Women from Domestic Violence Act, 2005[15] provides rights to women. The laws related to only men's problems and needs are not available. A growing recognition of domestic violence against men as a public health issue will open the avenue for more inclusive and meaningful strategies. Dedicated helplines, counseling services, and support networks for male survivors will provide much-needed support. Moreover, awareness campaigns will challenge societal biases, ensuring male victims are given similar compassion and seriousness as women. These changes, in some cases, shift the dynamics within households: it's crucial to establish that there is a tendency to acknowledge male abuse cases in the household. Despite evolving family structures, these are often not acknowledged because traditional social expectations continue to prevail in most areas. Research findings on domestic violence against males indicate that the abuse experienced may take different forms, namely verbal, emotional, and physical maltreatment. Men often say that they are insulted, threatened with false charges in law courts, refused love and affection, and mentally manhandled. This creates acute mental anguish, and disbelief among people that this phenomenon is not helping to make their lot any better. The assumption that women cannot be offenders only adds to the misfortune of men in courts and society. To help the male victims better, targeted interventions are critical. A growing recognition of domestic violence against men as a public health issue will open the avenue for more inclusive and meaningful strategies. The number of dedicated helplines, counseling services, and support networks for the survivors will be much appreciated, and awareness campaigns that fight societal biases will also address the issue of seriousness of the issue for the victims, similar to what it is for women. In this regard, it would be an issue to pay serious attention to in the society and its institutions.

This challenges the traditional notion of power; therefore, gender-neutral answers become a necessity to meet the issue of domestic violence. Awareness building, the inclusiveness of the law, and the robust support structures constitute the key for ensuring the administration of justice and garnering help for every victim without respect to gender. The first move towards greater equality and a sympathetic approach towards domestic abuse shall be to get the males who are the survivors to open up without fear of any judgments.

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A Comprehensive Review Of Cross-Border Mergers And Acquisitions In India

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Abstract -

Most companies in today's world want to be a part of the race of globalization, as a result, these companies want to get on the front page of modernization. One effective way for companies to do this is through cross-border mergers and acquisitions. The availability of cross-border deals that grant faster access to internationalization is one of the most remarkable trends of present-day M&As. This change directs inorganic, brownfield investments instead of more traditional organic FDI (green-field investments). With this background in mind, this research seeks to establish the topic and understand the legal framework regulating cross-border mergers and acquisitions in India.

During the research period, cross-border M&As continued to be a key source of global FDI, especially in the service industry in line with trends in M&As. While the overall M&A market in India is comparatively hopeful, it is through this route that a considerable portion of more recent FDI has entered the country. Cross-Border deals throughout the years have proved to be extremely profitable to most countries and companies involved, therefore, it is equally important to understand the legal aspects of this particular process.

After a thorough understanding of the term: Cross-Border Mergers and Acquisitions in India - the researcher has sought to - Identify the challenges faced by companies when getting into such transactions, the factors that influence and break such cross-border

deals, the legal challenges faced by acquiring nations when they conduct such transactions in the home country and lastly to understand the regulations related to CBMA's in the Companies Act, 2013. Therefore, this research paper aims to find both the advantages and disadvantages of CBMA's, while also understanding the underlying modern-day issues of these deals.

Keywords - Cross-Border Mergers and Acquisitions, Companies Act, De-mergers, Culture, Foreign Direct Investments

Theoretical Framework for Literature Review -

To comprehend the dynamics of cross-border M&A in India, the theoretical framework of this paper incorporates important legal, economic, and strategic ideas. Statutes including the Companies Act of 2013, the Competition Act of 2002, the Foreign Exchange Management Act (FEMA), and industry-specific recommendations published by the Reserve Bank of India (RBI) and the Securities and Exchange Board of India (SEBI) regulate the regulatory environment in India. The structure and permissibility of M&A transactions are established under this framework. The reasons driving cross-border M&A, such as market entry, resource acquisition, and economies of scale, are explained by theories such as transaction cost economics and resource-based perspectives.

Research Design -

The qualitative research technique used in this paper is founded on a thorough analysis of secondary sources, such as government publications, industry reports, and scholarly journals.

Secondary Sources - Books, Research papers and Articles

Introduction -

A significant factor in the economic internationalization of the Indian corporation is through cross-border M&A which enables firms to access a new market, acquire the latest technologies, or use many resources. India's regulatory structure has transformed from the time economic reform was initiated in 1991 and has provided legal recognition to such transactions. Besides, this alteration has likewise caused a positive environment for cross-border company integration, and simplification of compliance affairs. Cross-border M&A has been significantly simplified by legal and administrative processes due to the Companies Act of 2013 and changes to FEMA. For instance, Section 234 of the Companies Act discussing regulatory clearance of mergers specifically allows the crossing of

the spheres between Indian and international companies. At the same time, FEMA reforms have unfettered the foreign exchange regulation enabling most Indian business entities to conduct foreign transactions and invest abroad. Global competition has risen, and because of these reforms, India is now more competitive since it offers strong supervision procedures.[1]

Over the recent past, the Indian companies have displayed a wish or appetite to acquire overseas stakes in the developed as well as the emerging global markets. While competence in technology and sales and distribution are some of the primary reasons for acquiring companies in developed countries, especially in the US and Europe, other areas such as Africa, Latin America, and Southeast Asia have gained popularity mainly as tourist destinations and hence have a potential. As cultural and management differences may pose a challenge to post-merger performance, cultural and organizational integration remains a critical task with direction. Such factors as time and cost overruns are often caused by the interface of various legal systems, compliance regulations, and tax regimes if the construction project is across borders. This already complicated transaction procedure is further complicated by the need to obtain various regulatory clearances from entities such as the RBI, SEBI, and the CCI.[2]

Other challenges include risk with finance and valuation, which is most visible in volatile markets. While identifying target businesses and getting funding, it can be quite time-consuming and problematic to get the right values, especially in times like high interest rates or changes in the foreign exchange. The current change in the geopolitical and economic climate makes the completion of deals and the profitability of such transactions difficult. In the case of companies that engage in such transactions, the constant difficulty remains in satisfying compliance with these rules when formulating and executing strategies.[3]

Indian businesses need to balance their strategies while trying to eliminate these barriers since they cannot be completely done away with. This involves leveraging IT and business analytics to support operational decision-making, promotion of cultural integration to enhance harmonization, and completion of all-around research investigations to minimize risks. To overcome issues of jurisdictional barriers, businesses can also secure more cohesion and

efficiency or more assistance from the legal and regulatory professionals of the regions. Thus, Indian businesses have a great chance to enhance their global presence and development by performing cross-border M&A activity. Through these measures, Indian businesses can apply cross-border M&A as a means to achieve their strategic growth plans in a rapidly evolving global environment.[4]

Regulatory Framework of Cross-Border Mergers and Acquisitions in India –

India has over the years see-sawed its laws on M&As more so due to the Companies Act of 2013. This law initiated these measures to increase efficiency in business transactions and to change from the traditional methods of dealing with foreigners. Section 234 is one of its distinct features that was enacted to allow merger schemes of Indian and global operations after going through institutional approval. FEMA rules regulating foreign exchange transactions and external commercial borrowings are an addition to the Companies Act.

As for FEMA, India has liberalized its foreign currency policy to a very large extent, but it has also complicated the procedure. For instance, companies must, for example, obtain licenses for certain types of transactions and ensure that the sectoral cap limitations for foreign investment are met; pricing must be per the requirements set by the RBI among other things. Due to regulatory policies of India's foreign exchange and economic policy, the RBI regulates cross-border financial transactions. With its help, export investments of Indian enterprises are checked to ensure they do not exceed the permitted amounts, and inward ones are analyzed to exclude distortions in the market.[5]

This additional layer of compliance is often the culprit of delays. Delays of this kind could result in some losses or increased transaction costs to firms operating within a global market that is very sensitive to change. Additional permissions from MCA and CCI add to the process and make it even more time-consuming and complex.[6] For Indian businesses, the real challenge lies in resolving the conflict between compliance, on one end, and the need for speed in decision-making on the other. To overcome these challenges and enable crack to be made in the Global Market a stream of reform is needed to ensure that the restrictive structures currently hindering

Indian businesses are eliminated and replaced with a more flexible structure.[7]

Impact on the Economy –

Many claim that cross-border M&As disturb the target and acquiring firm's performance since they bring about numerous main financial and economic consequences. Saraswathy (2010) points out that these deals may have the following benefits: improved organizational efficiencies and economies of scale. [8]Cross-border M&As help businesses optimize costs, expand their market, and secure a favorable competitive position worldwide through alliances, resources, technology, and skills. However, many factors may hinder the flow and financial performance of cross-border M&A, and one major one is the difference in market valuation.[9]

An evaluation of the financial impact of cross-border M&A is also largely dependent on the sector of business where they are processing, value creation and growth challenges vary with different sectors, as evident in the technology and pharmaceutical sectors. In technology, high innovation rates and a high degree of intangibles imply ever-changing values that take special due diligence. [10]On the other hand, the pharmaceutical industry is motivated by patent rights and market exclusivity leading to high growth prospects but responds to risks of regulatory permits and merger issues. Fluctuations in exchange rates add more complexity to financial effects because many M&AC transactions involve the use of foreign currencies, and any adverse movement in the exchange rates will affect the cost of acquisition or dilute the returns expected. Moreover, there is no guarantee of achieving economic complementarity of these agreements.[11]

The expected benefits could thus be countered by post-acquisition operational challenges, issues related to the reconciliation of accounting standards, and reconciliations of financial systems. The use of financial and economic effects should support and not hinder the attainment of organizational strategic objectives and goals while at the same time avoiding shorter-tail business risks. Since the economic efficiency of these transactions plays a crucial role, their preparation and implementation require great attention.[12]

Cultural Integration Challenges –

One of the most crucial determinants of success within cross-border M&A is cultural integration. The disparities in management styles, work ethics, and organizational culture result in conflict during the post-acquisition stage. Tewari, Banerjee & De (2019) contend that cultural variations might negatively influence the synergies expected from such transactions through misunderstandings, low staff morale, and ineffective decisions. The management methods practiced by Western conglomerates have been particularly hard for Indian firms participating in cross-border M&As to embrace. Apart from resistance to change, conflict and poor working relationships stemming from diverse organizational cultures due to these different management philosophies can lead to failure in integration.[13]

Concisely, Jain (2021) also points out that management plays a central role in the process of obtaining positive outcomes for cultural challenges. Cultural similarities should be found after an acquisition and value differences and organizational goals of the acquired company should also be recognized. Some ideas of how practice can be improved are the connection of many decentralized decision-making and few global to have operational integration and to build confidence in organizations with multinational workers. Consequently, CI entails outside entities like suppliers, customers, and regulatory bodies apart from internal elements. Reputational risks may arise out of different approaches in how an acquired firm communicates with its customers or from values to be generated, which in culturally delicate industries, can be exploited by the acquiring firm.[14]

Employees of the acquired company may resist the changes because the modification is something that they may perceive as a threat to organizational culture which they have worked for a long term. Moreover, integration concerns might get exacerbated where there is little or no respect for culture during the due diligence process. Often, commercial considerations are given high value and little importance is placed on the cultural match. Consequently, the staff turnover or uneven target convergence within the companies and reaching the operational synergies are put into question, thus reducing the overall value of the deal. Besides such assessments before the start of the acquisition process, further work is required in organizational cultural compatibility after the takeover.[15]

Therefore, the state of managing cultural integration is considered one of the significant factors affecting the success of cross-border M&A. These transactions require an effective understanding of the pertinent national and organizational cultures apart from the financial and strategic contexts. Thus, organizations may minimize them and fully leverage Cross-border M&As by prioritizing the cultural fit and equipping the management teams with adequate knowledge.[16]

Legal Compliance –

One of the critical elements that affect the performance of cross-border M&A is compliance with legal standards. By the time due diligence is done and the legal structure of the acquiring company is understood, a tangled system of legal frameworks, regulations, and compliance mechanisms that can vary from one country to another must be considered during the M&A process. These transactions are effectuated smoothly in India only if they comply with regional laws especially the Companies Act, 2013, FEMA, and other laws depending on the sector.

According to Shankar (2022), FEMA regulation mostly leads to significant time lags and bureaucratic red tape. FEMA is involved in cross-border M&As by controlling the money remittance and foreign exchange transactions within and outside India. For instance, FEMA's regulation states that except for an Indian company acquiring foreign assets for its business or for a foreign corporation to invest in an Indian company the approval of FIPB or RBI needs to be taken depending on the type of transaction.[17]

Some foreign activities are prohibited as per Section 6 of FEMA and to meet these restrictions often involves complex approval and documentation processes many times. One of the activities that the RBI has to regulate is the cross-border Fund.[18]

Some specific legislative restrictions related to Indian healthcare, insurance, and finance industries make cross-border transactions rather challenging. Tewari et al. (2019) have pointed out that these rules are capable of significantly dragging down the process and inflating the entire cost of the transaction including expected financial benefits from the M&A.[19] Increased costs that are evident in most cross-border M&As due to delays in getting regulatory approvals affect the financial feasibility of cross-border M&As. For example, the Competition Commission of India (CCI)

plays a crucial role in analyzing mergers and acquisitions to establish possible anti-competitive behaviors. Under the provisions of the Competition Act of 2002, the CCI is required to regulate and approve transactions that may change the structure of competition barring circumstances that may significantly affect competition, including mergers or acquisitions.

The review procedure of CCI can be long and the transaction that hinders competition can be required to be altered or banned. Sequencing issues especially when the firm has to seek approval from multiple authorities from the SEBI, MCA to sector-specific regulatory bodies – which, as noted earlier by Tewari et al. (2019), Shankar (2022), distort the chronological order of events and lead to unduly long times. That apart is not beneficial for the deal as these may cause strategic misfits or result in lost opportunities for companies or might call for a term re-negotiation.[20]

The Role of Legal Advisors –

Companies planning cross-border M&A transactions must pay time and effort to understand the laws that govern both India and the jurisdiction of the target company. A thorough pre-acquisition examination that identifies possible regulatory challenges and defines the required compliance actions is needed. Such specialists can help steer through complex organizational and legal conditions that every transaction must meet and minimize danger. In addition, since cross-border M&As may result in cross-border tax implications that could alter the whole financial structure of the deal but not include a change in the stated financial structure, the countries involved must understand the peculiarities of the tax laws of the country in which the acquiring business is located, such as the Income Tax Act, 1961 or the Goods and Services Tax Act (GST).[21]

Finally, when it comes to cross-border M&A in India legal and regulatory challenges form the major problems. They opine that FEMA along with sector-specific regulation, and the requirement of clearances from various regulatory agencies can increase the transaction cost and lead to delays as discussed by Shankar (2022) and Tewari et al. (2019). To ensure the successful performance of cross-border M&A activities, legal and compliance planning is a necessarily crucial action taken by Companies.[22]

This presupposes knowledge of issues such as the detailed regulations that apply in sectors, FEMA specifications, and indeed,

multijurisdictional permission. These risks help establish that internationalization legal compliance is manageable, especially if integrated into strategic planning by the businesses that stand to achieve their key goals and objectives through international expansion. Organizations might be able to negotiate and navigate the various compliance challenges in cross-country M&As by so doing, getting professional legal assistance, understanding the general rules, and regulations, and ensuring they get the facts right.

Strategic Motivations for Cross-Border Mergers and Acquisitions –

The various goals of firms that want to expand internationally are all captured by the strategic motives of M&As. Some of the business transactions important to enable Indian businesses and industries to acquire new technologies, and enter into new marketplaces are - acquisition for new diverse inputs or sources of revenue, steady growth, and renewal. Sometimes the cross-border M&A is influenced by industry-specific factors and other times by global economic factors. The need for emerging technologies is one of the major rationales for Indian companies to undertake cross-border M&A activities.

These purchases provide the company with a pool of competent and skilled human resources apart from enhancing its technical abilities. Companies, to build their R&D capabilities and to achieve a competitive edge, some of the pharmaceutical firms including Sun Pharma and Dr. Reddy's have acquired businesses in the developed country aeration. One of the motivations for mergers and acquisitions across borders is the Call for new technologies. Some mergers and acquisitions are there because they want to incorporate brand-new technology into their operations and get back innovations and advancement.[23]

Manufacturing industries often engage in Cross-border M&A chasing overall production costs and a crucial resource. Bringing in acquisitions offers benefits to companies in terms of acquiring raw materials, reduced production costs, and improved supply chains in the resource countries. To achieve their relative industry advantages and operate in price-sensitive international markets, these Indian firms use these strategies. Indian companies are in a position to maintain their market share position and also enhance their profit

level by leveraging the operational efficiency of internationally located assets.

Revenue stream diversification is one of the key macro-strategies for cross-border M&A and is even more important in unstable economic conditions. Indian businesses might minimize the hazard related to fluctuation in the market and uncertainty related to regulations through the acquisition of businesses in several other areas or different sectors. One way that a company can create its competitive advantage through cross-border M&A is to acquire a different and unique set of intangible assets such as patents, copyrights, or trademarks, and/or to establish brand equity or eliminate competitors. For instance, Indian firms that invest in acquiring assets in other markets that have been submerged take up larger market stakes abroad; they also acquire important resources at cheap rates.

At times it can be hard to correlate the strategic goals of the target and acquiring companies, although the strategic forces are compelling.[24] Any strategic objectives must be ensured by robust operational enablers and adequate resources for the effective integration of strategies into operations. To generate the expected returns, an organization has to initiate research and development, assess the suitability of the target company's culture and working conditions, and combine the acquisition with the future growth strategy.

Therefore, this paper argues that the strategic motives of cross-border M&A give an insight into the reasons why Indian companies wish to be players in a globalized economy. However, achieving these strategic goals requires getting it right early by planning and conducting detailed market analysis in addition to quality execution. Thus, Indian companies have the potential to fully unlock cross-border M&A and achieve long-term growth in world markets if integration problems are dealt with adequately and especially if the acquisitions are planned and aligned with the company's strategic vision.[25]

Research Gaps –

The lack of sufficient research on how digital transformation helps to overcome post-acquisition integration is one of the critical gaps in the vast literature on cross-border M&As. Since organizations are turning towards technology as a solution for

managing internal processes and overcoming cultural differences, little research has been done on how digital platforms can help overcome integration hurdles. There is relatively scant scholarship regarding cross-border M&A performance and participation in particular among small and medium enterprises (SMEs). However, SMEs are crucial players in the global economy and the subject of effective production, distribution, and consumption, but they are under-researched because their experience reflects that they are smaller and distinctive than large firms, but they are exposed to different opportunities and risks.

Limitations –

There are several limitations to the literature presently published on cross-border M&A in the aspect of the Indian economy. Knowledge of the experience of SMEs is critically deficient in industries such as technology, banking, and pharmaceuticals where the dominant players are massive firms. The potential of the findings for the broader corporate landscape is slightly constrained by poor diversity representation in the research. In addition, the limitation of international operation regulation varies significantly across sectors more specifically according to FEMA. Cultural integration subject research also has its flaws, and very often provides a simplified view as to the challenges faced by businesses. Even though these works highlight gross differences in organizational cultures, they fail to take into consideration finer distinctions that occur in differences in the industry or geographical location, thus leading to inadequate post-acquisition integration plans.[26]

Relevant Findings –

Altogether, the finding of this research suggests that cross-border M&As must work in India with a four-pronged strategy that includes a compliance approach, a culture change perspective, and a strategic financial model. Saraswathy (2010) notes that to facilitate easy merger transactions there is a need for authorities to review their laws to operate in a changing world. Proactively addressing cultural differences is the focus of Zhijin Su. (2024) meantime. In light of these observations, it could be concluded that these findings suggest that in the pursuit of optimum return on CBM&A undertakings, regulatory strategies, and arbitrage should be of primary concern for Indian business.[27]

Future Scope –

The literature review indicates that there is still much untapped potential for academic work on cross-border M&As: Of course, one promising area of research is how digital technology might effectively support a smoother integration process during and after M&As. It is possible to increase the communication between individuals within the heterogeneous teams with the help of digital tools, regulatory compliance can be accelerated as well.[28]. There is a need to carry out more research on SMEs with operations in cross-border transactions. While SMEs face different challenges as compared to large firms, they are gradually becoming more engaged in India's foreign economic relations. The assessment of cross-border M&A impact on business performance shareholder value and economic stability requires Longitudinal data as well.[29]

Conclusion –

One of the most important strategies that Indian business organizations can employ to enhance their global reach and expand to new avenues is through the Cross Border M & A. Such arrangements are highly valuable because they can unlock immense growth opportunities for businesses since these organizations gain an opportunity to have wider sources of income, introduce themselves to new markets, and buy new, cutting-edge technologies. Again, the study highlights the need for a proper understanding of regulations, and strategic planning on how to overcome these hurdles.[30] By incorporating the regulatory laws for the global economy into efficient strategies the firm can ensure more successful transactions and long-term growth. This may generate valuable information for future projects when compared to the current research gaps in terms of topics such as the role of SMEs, the trend of sustainable long-term financial performance as well as internet-based business changes. Indian businesses can contain the risks associated with cross-border M&As by employing state-of-the-art technologies and focusing on preventive strategies.[31]

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