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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 Satyanarayan Bang is an accomplished academician, researcher, and legal educator with over two decades of distinguished service in the field of law. Currently serving as Associate Professor at the School of Law, CHRIST (Deemed to be University), Pune Lavasa Campus, he has built a reputation for excellence in Criminal Law, Constitutional Law, Competition Law, Forest Laws, and transparency-based statutes such as the Right to Information Act, 2005. His academic credentials include an MA in Political Science, LLM with specialization in Criminology and Torts, and a PhD in Law. He has also achieved the rare distinction of qualifying the UGC-NET in three different disciplines—Law, Criminology, and Human Rights.

Over the years, Dr. Bang has combined academic rigor with practical exposure. He briefly practiced as an advocate before entering full-time academia and later contributed significantly as a master trainer for the Right to Information Act-2005 under the Department of Personnel and Training (DoPT), Government of India, and as a trainer for the Maharashtra Right to Service Act-2015. His teaching and training experience extends to premier national institutions. Notably, he served at the Lal Bahadur Shastri National Academy of Administration, Mussoorie, where he taught IAS, IPS, and IFS officers, and at the Kundal Academy of

Development Administration and Management (Forest), Sangli, where he trained state forest officers. He also serves as a Visiting Faculty at the Indian Institute of Management (IIM), Raipur, teaching Legal Aspects of Business.

A prolific and committed researcher, Dr. Bang has authored and co-authored more than 60 publications across Scopus, Web of Science, and UGC-CARE journals, with several additional works currently in the publication pipeline. His research spans a diverse range of contemporary and emerging legal domains, including Artificial Intelligence and Law, cybercrime, environmental and forest governance, competition policy, gender justice, prison reforms, and judicial review. His doctoral research on "Judicial Review of Legislative Actions" continues to contribute meaningfully to constitutional scholarship.

Dr. Bang is a dedicated Research Supervisor, currently guiding 10 PhD scholars across varied areas of law. His mentorship has already resulted in four candidates being awarded the PhD degree under his supervision, reflecting both his academic leadership and the trust students place in his guidance. He also supervises LLM and LLB dissertations, consistently encouraging empirical depth, critical analysis, and methodological clarity in student research.

At CHRIST University, he plays a vital role in academic administration. He serves as the Coordinator of the LLM Programme, contributes to dissertation oversight committees, and has been actively involved in the drafting of key institutional policies, including the Internship Policy and the Student Regulation Policy. His roles in the Legal Aid Committee, Internship and Placement activities, and other administrative bodies reflect his commitment to student development and institutional growth.

Dr. Sanjay Bang is also a sought-after speaker, having delivered more than 50 invited lectures at universities, training academies, and international forums, including an academic engagement in Poland. Known for his clear, relatable, and

engaging teaching style, he has developed a strong presence in academic and professional circles.

Through his scholarship, teaching, research supervision, and public engagement, Dr. Bang continues to contribute meaningfully to legal education and public policy. His work reflects a commitment not just to academic excellence, but to shaping responsible, informed, and socially conscious legal professionals.

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Priya Mondal is a dedicated academician and researcher in the field of law, She has Ph.D.in Artificial Intelligence in Warfare: An International Humanitarian Law Perspective. 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 Six 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, AI and Law 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.

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Dr. Kalyani Abhyankar is an Assistant Professor of Law at CHRIST (Deemed to be University), Pune–Lavasa Campus, and a comparative legal scholar specialising in consumer protection law, digital markets regulation, and the intersection of law, technology, and behavioural governance. She holds a PhD from the National Law Institute University (NLIU), Bhopal, where her doctoral research examined e-commerce and consumer protection laws in India and the European Union from a comparative perspective, with a particular focus on platform governance, consumer autonomy, dark patterns, and regulatory enforcement in digital markets. Her teaching spans core and advanced courses such as Administrative Law, Consumer Protection Law, Local Self-Government, and Legal Language & Writing, and she is known for her concept-driven, real-world oriented pedagogy that connects doctrinal frameworks with contemporary regulatory challenges. Her research interests include digital consumer protection, data privacy, AI governance, competition law in platform economies, and comparative public law, and her scholarship engages with evolving legal responses to algorithmic decision-making and technology-driven market practices. She actively participates in academic conferences and international academic collaborations, contributes to peer-reviewed journals, and is involved in interdisciplinary research conversations at the India–EU interface. In addition to her academic work, she serves as Faculty Coordinator of the Internship Committee and

a member of the Admissions Committee, mentoring undergraduate and postgraduate students in research, internships, and professional development. Her academic philosophy emphasises human-centred regulation, ethical governance, and socially responsive legal education, particularly in the context of rapidly evolving digital ecosystems.

Dr. CHETAN JAYANT DIXIT

LLB, LLM, Ph.D.

Dr. Chetan Dixit is an Assistant Professor at the School of Law, Christ University, Pune, Lavasa Campus, where he has been contributing to teaching, research and academic leadership since 2017. He holds multiple postgraduate degrees, including an LL.M, and M.A. degrees in Political Science and History, and has qualified both NET (2012) and SET (2013) in Law. He has Ph.D. on *"A Critical Study of Data-Driven Mergers under Competition Law – A Comparison of the US, EU, and India"* His research interests span competition law, human rights, media regulation, and social security. He has presented papers at national and international conferences and has delivered keynote talks on themes relating to democracy and constitutional governance. His professional experience includes academic roles and earlier work as an Associate Attorney, complementing his interdisciplinary expertise in law and social sciences. Beyond academics, he has actively contributed to institutional development through roles such as Faculty In-Charge of the Moot Court Society, Legal Aid Cell, and various extracurricular initiatives, while also being associated with policy-oriented projects such as the Government of Karnataka's Urban Development Law project in collaboration with NLSIU, Bengaluru.

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A critical analysis of the legal regulation of Predatory pricing under the Competition Act 2002, Sherman Act 1890 and Clayton Act 1914

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Abstract:

This paper examines the regulatory frameworks that govern predatory pricing in India and the USA, focusing on their effectiveness in promoting competitive and consumer-friendly marketplaces. Predatory pricing is a pricing strategy in which dominant firms set prices for their products or services below cost to drive out existing competitors. Such tactics raise questions of competition law.

This study is broken into three sections: regulation of predatory pricing in India, regulation of predatory pricing in the USA, and a comparison of predatory laws in India and the USA of America. The Competition Act 2002 (India), which the Competition Commission of India enforces, prefers early intervention against predatory pricing based on market dominance and competitive impact rather than proof of recoupment. The Sherman Act of 1890 and the Clayton Act of 1914, both common in the United States, provide the burden for proving predatory pricing, requiring the plaintiff to demonstrate below-cost pricing and a fair probability of recoupment. By comparing both approaches, this study demonstrated the strengths and limitations of each system, concluding that a balanced regulatory model may combine components from both techniques.

Keywords: Predatory pricing - Recoupment - India - U.S.A. - Market Dominance - Competition Commission of India - Antitrust laws - Consumer welfare.

Statement of problem:

Predatory pricing is a significant anti-competitive issue that requires regulators to balance market competitors and consumer welfare. The varying methods India and the U.S.A. adopted to control predatory pricing threaten the development of a practical legal framework.

The challenge is to strike a material balance between intervention and market independence. India's approach may overregulate, discouraging healthy competition, whereas the U.S.A.'s approach may underregulate, which may allow destructive anti-competitive practices. Thus, a comparative analysis of different regulatory frameworks is necessary to find the best legal framework that reduces predatory pricing while allowing legitimate competition to thrive. This paper seeks to bridge such a gap by assessing the effectiveness of each framework in creating a competitive but consumer-friendly market environment.

Research questions:

1. What approach does India have towards regulating predatory pricing?
2. What approach does the U.S.A. have towards regulating predatory pricing?
3. How does India's predatory pricing law differ from that of the U.S.A.?

Research objective:

1. To assess the efficiency of India's current legal framework for predatory pricing.
2. To evaluate the effectiveness of the current legal framework governing predatory pricing laws in the USA.
3. To compare the disparities between predatory pricing rules in India and the USA.

Research methodology:

This study employs doctrinal methods to investigate and explain legal concepts, statutes, and case law.

The doctrinal method is separated into two parts: primary and secondary sources. The primary sources include statutes such as the Competition Act of 2002, the Sherman Act of 1890, and the Clayton Act of 1914, all of which control anti-competitive practices in India and the USA. These serve as a framework to ensure market competition.

Judicial interpretation is a crucial primary source of doctrinal methods; thus, the paper includes landmark rulings and pertinent case laws.

This paper's secondary sources include journal articles and commentary. Famous scholars' legal opinions give insight into the complicated issues surrounding competition law. Academic and professional journal articles feature current discussions and analyses of competition law.

Introduction:

Before the Competition Act of 2002, the Monopolies and Restrictive Trade Practices Act of 1969 existed. The current statute, the Competition Act of 2002, addresses anti-competitive activity, competition advocacy, a new and substantial amendment, abuse of dominance, and combination rules in India. Section 4 of the Competition Act 2002 addresses the abuse of dominance. Several issues arose throughout the provision's implementation.

In 1890, Congress passed the first antitrust law, the Sherman Act, which serves as a complete charter of economic liberty, protecting unrestrained competition as the trade rule. Congress passed two new antitrust legislation in 1914, including the F.T.C. Act, which founded the FTC. The other law enacted was the Clayton Act[1].

The Sherman Act outlaws "any contract, combination, or conspiracy in restraint of trade," including "monopolization, attempted monopolization, or conspiracy or combination to monopolize[2]."

The F.T.C. Act prohibits unfair competition and unfair or deceptive acts or practices[3].

The Sherman Act does not explicitly prohibit mergers and interlocking directorates (where the same person makes business decisions for competing companies). The Clayton Act addresses behaviours that the Sherman Act does not prohibit[4].

This paper examines the regulatory frameworks for predatory pricing in India and the USA. The Competition Act of 2002 in India, the Sherman Act of 1890 and the Clayton Act of 1914 in the USA provide the legal foundation for tackling predatory pricing practices.

Regulation of Predatory Pricing in India:

Section 4(2)(a)(ii) of the Competition Act, 2002 states that unfair or discriminatory pricing, including predatory pricing, in the purchase or sale of goods or services is prohibited under the act[5].The prohibition on unfair or discriminatory pricing, including predatory pricing, does not apply to conditions or prices established to meet competition.

Section 4 of explanation (b) of the Competition Act 2002 defines "predatory pricing" as 'the sale of goods or provision of services at a price which is below the cost, as determined by regulations, of production of the goods or provision of services, to reduce competition or eliminate the competitors'[6]. Predatory pricing is an exclusionary behaviour engaged by firms with a dominant position[7] in the relevant market[8].

Several essential elements influence predatory behaviour, including[9]:

a) Establishing the business's dominant position in the relevant market.
b) The dominating firm sells the relevant product in the relevant market at a lower cost. [The term "cost" is defined in the Competition Commission of India (Determination of Cost of Production) Regulations, 2009, as notified by the Commission.]
c) Intention to reduce or eliminate competitors. This is commonly referred to as the predatory intent test.

According to Section 27 of the Competition Act, if the Commission determines after an inquiry that an agreement referred to in Section 3 or the conduct of an organization in a dominating position violates Section 3 or Section 4, it may give one or more of the following directives[10]:

a) Order the concerned group of enterprises, individuals, or associations involved in the agreement or abuse of dominant position to dissolve the contract or cease abusive behaviour and refrain from repeating such actions.
b) Impose a penalty of up to ten per cent of the average turnover or revenue over the previous three financial years for any party involved in the arrangement or found guilty of abusing its dominating position.

Judicial analysis of predatory pricing in India:

In *MCX Stock Exchange Ltd. v. National Stock Exchange of India Ltd.(2011)*[11], the CCI determined that predatory pricing is a subset of unjust pricing. Because unjust pricing has not been defined elsewhere, it must be determined based on the facts of each case. The injustice of the customer or competitor must be taken into consideration. The CCI said there is no rational explanation for the National Stock Exchange of India (NSE) to continue providing free services for an extended period and that zero price goes beyond promotional or penetrative pricing.

In *Transparent Energy Systems (P) Ltd. v. TECPRO Systems Ltd. (2013)*[12], the CCI noted that the following findings are significant in determining predation:(a) The enterprise's goods or services are meagre in price; (b) the goal is to drive out competitors from the market, who would be unable to compete at that price due to the low pricing; (c) significant planning is in place to recover any losses once the market rises again; or (d) the competitors have already been forced out.

The accusation of predatory pricing was the main point of contention before the CCI in *Bharti Airtel Ltd. v. Reliance Industries Ltd. (2017)*[13]. The issue arose from accusations that

Reliance Jio Infocomm Limited (RJIL) has been providing free telecom services at rates lower than its average variable cost to eliminate competitors since its inception. The CCI stated that the alleged predatory behaviour should be probed if RJIL controls the relevant market; otherwise, there is no basis to investigate predatory pricing. The CCI's observation indicated that the informant had not demonstrated a reduction in competition or the elimination of any rival due to RJIL's actions. According to the CCI, RJIL was a new entry in the market, and the competitive pricing it implemented was a short-term business strategy to win market share and create its identity.

Regulation of predatory pricing in the U.S.A.:

According to Section 2 of the Sherman Antitrust Act of 1890, anybody who monopolizes attempts to monopolize, joins, or conspires with others to monopolize any portion of trade or commerce within or between states or foreign nations commits a felony. Upon conviction, the punishment may include a fine of up to $10,000,000 for businesses or $350,000 for individuals, as well as imprisonment for up to three years at the discretion of the Court[14].

To establish attempted monopolization, the defendant must demonstrate (1) predatory or anti-competitive behaviour, (2) intent to monopolize, and (3) a high likelihood of attaining monopoly power[15].

Section 2 of the Clayton Act of 1914 defines unlawful pricing discrimination in commerce as any activity hindering competition, including restrictions governing predatory pricing. It forbids companies from charging different rates to different consumers for the same commodities if doing so reduces competition, creates a monopoly, or harms competitors. Price variances that reflect genuine cost variations in manufacturing, selling, or delivery owing to different methods or quantities are allowed as an exception[16].

The section additionally provides F.T.C. oversight to reduce quantity differentials that are unfairly discriminatory or

monopolistic. Furthermore, price changes are permitted due to changing market conditions, such as perishability, seasonal obsolescence, or business closure.

In pricing discrimination allegations, the defendant bears the burden of proving that their pricing practices were justified and acting in good faith to match a competitor's price. Provisions also prohibit offering unequal remuneration, concessions, or discounts to one purchaser over another and willfully inducing or accepting discriminatory rates[17].

Judicial analysis of predatory pricing in the U.S.A:

In *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*[18], the US Supreme Court clarified the threshold for proving predatory pricing under the Sherman and Robinson-Patman Acts. The action was based on Liggett Group's claim that Brown & Williamson set generic cigarette prices below cost to force Liggett out of the market and recuperate losses through price increases.

The Court outlined a two-part test for determining predatory pricing:

Below-Cost Pricing[19]: The plaintiff must demonstrate that the defendant's pricing fell below a relevant cost measure, usually average variable cost.

Recoupment: The plaintiff must show a "reasonable likelihood" or "dangerous probability" that the defendant will recover its losses, which would entail raising prices high enough to offset initial losses, essentially permitting the defendant to control or monopolize the market.

A comparative analysis of predatory laws in India and the U.S.A.:

For pricing to be affirmed anti-competitive and actionable, U.S. courts frequently require evidence that the company may subsequently "recoup" its losses by raising prices to monopoly levels once competitors are driven out. The recoupment requirement distinguishes between aggressive but legal price cuts that help customers and predatory pricing designed to undermine competition. Courts contend that no

anti-competitive harm emerges without recoupment because consumers benefit from lower prices without suffering from future price increases.However, judicial interpretation of the recoupment requirement frequently fails to comprehend the complexity of recoupment. Courts tend to set unrealistic recoupment requirements, making it highly impossible to prove predatory pricing. Courts often overlook alternate avenues for a company to recuperate losses, such as recouping in complementary or geographically distinct sectors, engaging in cartel-like activities, or building hurdles that hinder entrance into the market[20].

This recoupment requirement is not emphasized under Indian law, where the Competition Act of 2002 concentrates on dominant firms' below-cost pricing to limit competition without needing proof of recoupment. Thus, India's approach may enable more extensive regulatory involvement against predatory pricing without the severe recoupment analysis required in the U.S.A.[21].

Following are the differences between the predatory laws of India and the U.S.A. in a tabular form[22]:

Aspect	India	U.S.A.
Governing Law	Competition Act,2002	Sherman Act, 1890; Clayton Act, 1914
Regulatory authority	The Competition Commission of India (CCI)	Federal Trade Commission (FTC); Department of Justice (DOJ)

Definition of predatory pricing	Section 4 Explanation (b) of the Competition Act of 2002 defines it as the sale of goods or the provision of services at a price less than the cost of production, as determined by regulations, to minimize competition or drive out competitors.	Not defined explicitly in U.S. statutes but interpreted through case law as pricing below cost with intent to monopolize
Requirement for Recoupment	The Competition Act of 2002 in India emphasises below-cost pricing by dominant enterprises to prevent competition rather than recoupment.	U.S. courts require proof that the company can "recoup" losses by raising prices to monopoly levels after competitors are eliminated.
Purpose of Recoupment Requirement	Not required; emphasis is on preventing below-cost pricing that impacts competition, regardless of future price increases.	To distinguish between aggressive price cuts that benefit consumers and predatory pricing intended to harm competition.

Alternative Avenues Overlooked	It is not applicable since evidence of recoupment is not required to demonstrate predatory pricing.	Courts may overlook ways companies recover losses outside of direct pricing, such as through complementary products, geographic expansion, or cartel-like behaviours.
Impact on Legal Intervention	Indian law allows more proactive intervention without stringent recoupment requirements but risks overregulating price competition.	U.S. law may underregulate by making it challenging to prove predatory pricing, potentially allowing anti-competitive practices.
Criteria for Determination	Price is set very low; aimed at eliminating competitors; intent to recover losses later; evidence of reduced competition or competitor exit.	Two-part test: (1) Below-Cost Pricing and (2) Likelihood of Recoupment (defendant can likely control the market and raise prices).
Intent and Evidence	It requires evidence that pricing aims to drive out competitors and recover losses post-competition reduction.	The plaintiff must show intent to monopolize and the probability of recouping losses after driving competitors out.

Suggestions and Conclusion:

Following are the suggestions for a balanced regulatory approach -

- Adopting A flexible recoupment test in India could assist in distinguishing between legitimate price competition and truly anti-competitive predatory practices, allowing for more precise action while not restricting competitive pricing.
- Revising the rigorous recoupment requirement in the U.S.A., particularly in areas with substantial entry barriers, could allow for a more feasible enforcement mechanism that promotes consumer welfare while preserving competition.
- A single international framework or guidelines based on both systems' characteristics could improve predatory pricing control's worldwide effectiveness, particularly as markets become more interconnected.

India and the U.S.A. regulate predatory pricing differently, influenced by their respective economic and competitive policy objectives. As governed by the Competition Commission of India (CCI), India's approach is proactive, allowing for prompt intervention in predatory pricing instances by assessing market dominance and intent to restrict competition. The CCI prioritizes assessing market strength and competitive impact, resulting in a practical framework for addressing predatory pricing at an early stage. India's more flexible approach may dissuade anti-competitive practices but bears the risk of overregulation.

With its strict evidence standards, the U.S. approach makes demonstrating predatory pricing more difficult. U.S. courts demand proof of below-cost pricing and the possibility of recoupment—raising prices to monopolistic levels after competitors are eliminated. This criterion is designed to protect competitive price reductions that benefit consumers, but because of the tight recoupment requirement, establishing

predatory pricing cases has proven challenging. As a result, U.S. law is less interventionist, frequently relying on market forces to resolve conflicts without convincing proof of monopoly recoupment potential. The U.S. approach is consumer-focused; it may allow some anti-competitive behaviour to go unchecked.

A balanced regulatory approach could draw on learning from both systems, enforcing stringent monitoring where markets are weak while encouraging competitive pricing for customer advantage. India, for example, may benefit from using a modified recoupment analysis to avoid overregulation. In contrast, to safeguard market competition, the U.S.A. may consider reducing its burden of proof in predatory pricing instances.

Ref.:

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2. Ibid
3. Ibid
4. Ibid
5. The Competition Act,2003, § 4.
6. The Competition Act, 2003,§ 4.
7. Explanation (a) of Section 4 of the Competition Act 2002, defines "dominant position" as a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to(i) operate independently of competitive forces prevailing in the relevant market;or(ii) affect its competitors or consumers or the relevant market in its favour
8. Section 2(r) of the Competition Act,2002 defines "relevant market" as the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets
9. Competition Commission of India,Provisions relating to abuse of dominance(2022)(last visited Nov 9,2024).
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14. Sherman Act of 1890, § 2, 15 U.S.C. §

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20. Christopher R. Leslie, Predatory Pricing and Recoupment, 113 COLUM. L. REV. 1695(November 2013)
21. Ibid
22.

Analysing the Framework of Intellectual Property Rights Enforcement in Protecting Fashion Designs in India: Challenges and Legal Perspectives

By

Smrithi Ajith Kumar

Final Year B.B.A LL.B (honours) Student, Christ (Deemed to be University), Pune Lavasa.

Abstract

The following paper examines the effect of the existing Intellectual Property Rights in securing protection for Indian fashion designs and the practical implications encountered by fashion designers under the existing IPR framework. Given the changing trends in fashion and widespread influence of internet has led to the spread of counterfeit goods and knockoffs. This has in turn led to creative designs facing dramatic barriers despite the existence of a number of safeguarding measures such as the Desings Act, 2000; Copyright Act, 1957; and the Trademarks Act, 1999. This paper aims to provide an overview of existing legislative mechanism and enforcement issues thereby underlining the need for integral IP protection in the fashion industry towards curbing design piracy.

Keywords: Counterfeits; Knockoffs; Fashion; Design Piracy; Trademark

Statement of Problem

Fashion Designers in India have been facing the issue of availing protection for their designs due to the fragmented and limited scope of protection offered by the current intellectual property regime. The limited scope of protection offered by the current IP regime has exposed the designs of the designers to many forms of design piracy. The birth of the issue to design

piracy arises from gaps in the current IPR regime wherein the Desings Act, 2000 restricts protection exclusively to registered designs, the Trademarks Act, 1999 extends protection only to logos and distinctive marks and the Copyright Act, 1957 extends its protection only to artistic works thereby making designs vulnerable to unauthorised replication and distribution.

Research Objective

The chief objective of this research is to understand the existing legal framework involved in the protection of Fashion Designs in India by assessing the limitations of the Designs Act, 2000, Copyright Act, 1957 and the Trademarks Act, 1999 by examining the challenges faced by designers in obtaining IP protection.

Research Methodology

The following research will apply qualitative data approach wherein it will study legal texts, case laws and review in detail the relevant intellectual property laws governing fashion design protection in India. Therefore, the findings will be based on secondary data.

Introduction

In the world of fashion, the intangible assets of goodwill and reputation are paramount, as every fashion house strives to establish a trans-border presence, unfortunately, the practice of counterfeiting and knockoffs has plagued the fashion industry for centuries[2]. As one of the fastest-growing sectors globally, the fashion industry faces an increasing number of infringements, including passing off and other violations, as it continues to expand, and the magnitude of this issue cannot be underestimated[3]. Fashion brands invest substantial time and resources in creating and protecting their intellectual property, yet the prevalence of counterfeit goods and the exploitation of intellectual assets is on the rise. In the United States alone, fashion businesses have suffered an estimated loss of over $200 billion in potential sales due to illegal counterfeiting[4].

In this ever-evolving world where change is the only constant, intellectual property is the fuel that drives innovation

and creativity[5]. The primary reasons that contributed to the economic significance of intellectual assets is globalisation and trade facilitation[6]. Under the following pretext, it can be observed that one of the business industries that heavily rely upon the protection of intellectual property rights is the fashion industry. Fashion in earlier times was observed as a form through which an individual wishes to communicate one's personality however in this century, the fashion industry has evolved to become a multi-million-dollar industry thereby according to industry statistics this has resulted in the apparel and the textile industry gaining the place of fourth most significant sector in the world[7]. The fact that globalisation is viewed as a boon for trade facilitation is undeniable however this transformational agent has also opened gates for law breakers to perform illegal acts by way of violating the existing IPR regime[8].

In today's digital age, fashion trends have become an integral part of everyone's life, leading to the widespread popularity of luxury goods even among the general public[9]. However, this growing awareness has given rise to a concerning issue known as 'Fast Fashion.[10] ' This phenomenon occurs when the latest prints, furs, and designs spotted on runways or worn by celebrities at award shows, movie premieres, and fashion week events are rapidly copied and sold to consumers at discounted prices—often before the original designer's version even reaches the stores[11]. Amidst the increasing demand for couture fashion, the fashion industry feels it has been neglected by the intellectual property laws, despite significant lobbying efforts by fashion houses to protect their designs[12]. The industry believes that many of the issues caused by Fast Fashion could be mitigated if designers were granted more robust legal rights over their creations.

For instance, The Designs Act, 2000 can be deemed as the governing legislation that primarily protects designs however issues such as long registration process and lack of protection provided to unregistered designs has made fashion

designers to rely on the Trademark Act, 1999 which has also been structured in a manner to protect design elements since it primarily covers logos however seeking protection under this Act restricts the creative scope for designers[13]. Additionally, design protection under copyright law is limited to pictorial, graphic, or sculptural works, which poses a problem for the fashion industry, as the law does not recognize fashion as an art form[14]. Fast Fashion exploits gaps in intellectual property protection, enabling cheap imitations to enter the market before original designs are released[15]. The limitations posed by the existing legislation hinder designers from safeguarding their work, stifling creativity and allowing the fast fashion industry to profit from unauthorized copies. The core issue is that existing laws fail to fully recognize or protect the dynamic nature of fashion design, leaving designers vulnerable to infringement and diminishing incentives for innovation[16].

Role of Intellectual Property Rights in Protecting Designs:

Fashion Designs in India are protected primarily under three legislations, i.e., The Designs Act 2000, the Trademarks Act 1999, and the Indian Copyright Act 1957[17].

Designs Act, 2000

The Designs Act of 2000 extends protection to fashion designs that are registered under the following Act. S 2(d) of the Designs Act defines "designs."

"Design means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trademark as defined in clause (v) of sub-section (1) of S 2 of the Trade and Merchandise Act, 1958 or property mark as defined in S 479 of the Indian Penal Code

or any artistic work as defined in clause (c) of Section 2 of the Copyright Act, 1957[18]."

Therefore, per the design definition provided under the Design Act, it can be inferred that any article with artistic features appealing to one's eyes can be granted registration. In addition, to get protection under the Designs Act, 2000 conditions such as new/original, the Design must not be disclosed to the public in India or anywhere else by way of publication before the day of applying for registration; the Design must have the ability to be distinguished from known designs or a combination of known designs and the Design must not contain scandalous or obscene matter[19]. Designs Rules, 2001 enables a designer to gain protection not against one particular article but against a class of articles as enumerated in Schedule-3[20]. As per S11 (1) and (2)[21] of the Designs Act, copyright in a registered design is given for ten years from the date of registration, which may be further extended for five years[22]. The Designs Act protects a registered design from being pirated wherein any person pirating a registered design will be penalized with a sum not exceeding twenty-five thousand rupees[23]or if the proprietor of a design opts to bring forth a suit for recovery of damages for involving any act of theft and for any sanction against thereof, to pay such compensation as may be awarded and to be restrained by injunction accordingly and the total sum recoverable shall not exceed fifty thousand rupees[24].

The Designs Act 2000 includes provisions penalizing piracy of a design under S 22 of the Act[25]. Piracy of a design means applying a design or its imitation to any article belonging to the class of articles in which the Design has been registered for sale or importation of such articles without the written consent of the registered proprietor[26]. Even though the mentioned Act does not explicitly address the term 'Counterfeiting,' S 22 of the Designs Act, 2000 lays down two instances that primarily amount to design piracy, i.e., the importation of any registered design for sale without the

consent of the registered proprietor and the fraudulent or blatant imitation of a registered design[27]. Therefore, it can be deemed that the Designs Act of 2000 provides an inclusive definition of design piracy.

Trademarks Act, 1999

While the Designs Act of 2000 only extends its protection to registered designs, the Trademarks Act of 1999 offers protection to both registered and unregistered marks. S 29 of the Act deals with infringement of a registered trademark. According to S 29 of the Trademarks Act, 1999, any person using a trademark identical or deceptively similar to a registered trademark shall be liable for trademark infringement[28]. S 27 of the Trademarks Act, 1999 deals with the aspect of passing off of unregistered marks by stating that no person can file a proceeding preventing the infringement of unregistered trademarks and enables the recovery of damages for the infringement of an unregistered trademark[29]. The following is facilitated by S 135 of the Trademarks Act, 1999, which states that based on losses incurred by the owner of a trademark or the profits gained by counterfeiters' compensatory damages can be awarded as a remedy in an infringement suit[30]

S 102 of the Trademarks Act, 1999, deals with the offense of falsifying a mark as an act in case any person creates an identical or a deceptively similar trademark from a genuine trademark without the owner's permission[31]. S 102 applies to marks that are not registered as well as against registered marks[32]. Therefore, under the following provision, the offense of 'counterfeiting' can be brought in aptly within the interpretation of the term' false trademark.' In addition, S 103 of the Trademarks Act, 1999 imposes penalties upon the infringer for applying a false trademark or manufacturing counterfeits, ranging from six to three years of imprisonment and a fine of up to two lakh rupees[33]. Therefore, while S 135 provides a civil remedy for the infringement of registered or unregistered trademarks, S 102 imposes a criminal penalty for

any trademark infringement committed with an intent to defraud[34]. S 102 provides a provision through which the offense of Counterfeiting can be addressed[35].

Copyright Act, 1957

The Copyright Act of 1957 protects artistic works and its application in the fashion industry generally takes its source from S 15 of this Act. The essence of S 15 of the Copyright Act, 1957, states that a design capable of being registered under the Designs Act, 2000 and registered under the mentioned Act, will get exclusive protection under the Designs Act, 2000. Secondly, the designs that can be registered under the Designs Act, 2000, but not registered under the Act will be eligible to avail protection under the Copyright Act, 1957. Lastly, the designs not capable of being registered under the Designs Act 2000 will get protection under the Copyright Act 1957 as original artistic works[36]. This implies that a fashion design that can be protected as 'Design' under the Designs Act, 200 will get Copyright protection only under the Designs Act, which will persist for a maximum period of fifteen years[37]. In addition, a fashion design that can be registered as 'Design' under the Designs Act, 2000 but not registered will be eligible to avail copyright protection under the Copyright Act, 1957, until the fiftieth reproduction of the article through an industrial process[38]. Lastly, any fashion design that involves an original artistic work but is not capable of availing protection under the Designs Act, 2000 will get protection as Copyright Protection under the Copyright Act, 1957, which subsists during the lifetime of the author plus sixty years[39].

Suggestions

Analysing the Designs Act, 2000, the Designs Act only protects registered designs; therefore, fashion designers who are not registered will only be able to avail the benefits of the Act. It must be observed that the fashion industry is inherently cynical and dynamic, wherein change is the only constant in this industry, regularly updating its collection according to different seasons, mainly owing to the growing issue of

counterfeit and knockoffs. Fashion designers are forced to change their entire store's merchandise frequently; thereby, the fashion calendar that used to consist primarily of two seasons, i.e., Spring/Summer and Autumn/Winter, has added three to five additional mid-seasons to the calendar[40]. This requires that fashion designers are given automatic or immediate protection, regardless of whether a design is registered or otherwise. The Designs Act of 2000 framework needs provisions based on unregistered design protection. Considering this, the Trademarks Act of 1999 provides robust protection to fashion designs as the following Act extends its protection to registered and unregistered trademarks. In addition, most fashion houses prefer to avail protection to their article under the Copyright Act, 1957 as "original artistic work" since the fashion design is better protected under the Copyright Act, 1957. Through this, the designer receives protection for the author's lifetime and an additional sixty years when published during the author's lifetime[41].

One of the practical limitations faced by the current IPR regime in its battle against Counterfeiting is the time-consuming registration process. Many smaller to medium-level fashion houses are deterred from registering their designs under the existing IPR regime protecting fashion designs as the entire process of registration of a design, i.e., from the date of filing of the application till the grant of certificate of registration, takes about a minimum of ten to twelve months and considering the cynical nature of this Industry wherein the life of a garment of a fashion designer stays in trend for a maximum period of three to four months[42]. Therefore, this leaves the designer with the option of applying for design registration before the product hits the market. However, the following exposes the Design being exploited by various individuals upon whose hands it may fall, depriving the designer of the privilege of only registering those designs that have the economic value to be registered. The protection offered by the Designs Act 2000 protects each aspect of a

garment individually as per S 2(d) of the Act[43]. Instead, the Act should aim to protect the overall look of a garment because often, a fashion garment includes a combination of designs and trademarks.

Conclusion

It is worth noting that the existing IPR regime in India has been striving to extend its protection in the best possible manner in order to effectively cater to the interests of the designers however, the IPR regime imposes several practical implications upon the fashion designers which is proving as an obstacle for fashion houses to utilise the available provisions in the fullest manner. In Rajesh Masrani v. Tahiliani Design Pvt. Ltd.[44] (2008), artistic work under Section 2(c) of the Copyright Act, 1957 was stretched to enveloped printed designs on textile and accessories. The appeal of the defendant held that such protections are to be granted under Designs Act, 2000, as it entails majorly with the ornamental design of apparel, among others. Indian legislation, however, prohibits redundancy: a design that is registered in accordance with the Designs Act is ineligible for copyright protection, and conversely. This requirement compels fashion designers to make a choice between safeguarding either the design or the artistic idea, thereby exposing one component to potential imitation. This situation underscores a deficiency within the legal framework, complicating the provision of holistic protection for fashion creations within India.

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"Challenges and Implications of Compulsory Licensing of Pharmaceutical Patents in India: Balancing Public Health and Patent Rights"

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Abstract

The paper examines the complex interplay between patent rights and public health in India,[1] focusing on compulsory licensing of pharmaceutical patents. Compulsory licensing is a provision within the Indian Patent Act (1970) that allows third-party production of patented drugs without the consent of the patent holder under certain conditions, primarily to enhance access to essential medicines.[2] This provision is intended to mitigate the high costs of patented medicines by allowing affordable alternatives, particularly in situations where public health demands take precedence over exclusive patent rights. However, despite the potential benefits of compulsory licensing, it remains underutilized in India.

The limited application of compulsory licensing reflects several challenges within India's legal and regulatory framework. The procedural complexities in proving "public interest" or the "unaffordability" of a drug present substantial barriers for applicants. Additionally, lengthy administrative processes, coupled with high economic thresholds for issuing compulsory licenses, hinder effective implementation. The paper also discusses the impact of international obligations under the TRIPS Agreement, which provides for compulsory licensing but subjects member states to scrutiny and pressure

from developed countries that Favor stronger patent protections.

Several landmark cases illustrate the complexities of compulsory licensing in India. For instance, in Natco Pharma Ltd. v. Bayer Corporation (2012), India's first compulsory license was granted, allowing Natco to produce a generic version of Bayer's cancer drug, Nexavar. This decision was pivotal, setting legal standards for compulsory licensing by emphasizing the importance of drug affordability and public accessibility. However, subsequent applications, such as Lee Pharma v. Astra Zeneca (2015), were unsuccessful, underscoring the stringent requirements applicants must meet, such as proving inadequate supply or excessive pricing. The paper compares India's approach with those of other countries, such as Brazil and Thailand, which have proactively used compulsory licensing to lower healthcare costs. It examines the support for compulsory licensing under the Doha Declaration, which allows WTO members to prioritize public health. Additionally, alternative models like patent pooling and voluntary licensing are explored as complementary solutions to India's health access challenges. To strengthen compulsory licensing in India, the paper proposes specific reforms. These include clarifying legal criteria for issuing licenses, streamlining the application process to expedite approvals, and establishing transparent royalty frameworks to fairly compensate patent holders without delaying access. Furthermore, government-supported public-private partnerships could encourage voluntary licensing arrangements, expanding access to essential medicines while respecting patent rights.[4]

This study concludes that while India's compulsory licensing provision has substantial potential to improve healthcare access, the procedural, economic and policy barriers must be addressed. Legislative reforms should aim to ensure that compulsory licensing aligns with public health needs, allowing it to become a practical tool for social welfare rather

than a theoretical option.[5] By enhancing legal clarity and fostering innovation through voluntary partnerships,[6] India can more effectively balance patent rights with the right to health, fulfilling its dual commitments to innovation and equitable healthcare.

Keywords: Compulsory Licensing, Pharmaceutical Patents, Public Health, TRIPS Agreement, Indian Patent Act

Statement of Problem

Despite the provision for compulsory licensing under Indian patent law, its application remains minimal. This limited usage raises questions about whether procedural, economic, or political barriers prevent its effectiveness in enhancing access to essential medicines. The conflict between incentivizing innovation and ensuring public health through affordable drugs presents a challenge that this paper seeks to address.

Research Objective

Despite the provision for compulsory licensing under Indian patent law, its application remains minimal. This limited usage raises questions about whether procedural, economic, or political barriers prevent its effectiveness in enhancing access to essential medicines. The conflict between incentivizing innovation and ensuring public health through affordable drugs presents a challenge that this paper seeks to address.

Research Methodology

This paper employs a doctrinal approach, analysing statutory provisions, case law, and international agreements to examine compulsory licensing in India. Comparative analysis with other jurisdictions is included to provide context and alternative perspectives.

Introduction

[7]Intellectual property rights, particularly patents, play a critical role in fostering innovation by granting inventors exclusive rights to benefit from their inventions. This exclusivity, intended to encourage research and development,

is especially significant in sectors like pharmaceuticals, where developing a new drug involves substantial financial investment and time. Patents allow pharmaceutical companies to recover their investments by enjoying a period of monopoly, during which they can set prices without competition.[8] However, in the context of public health, patent rights can present serious ethical and economic challenges, particularly when they limit access to essential medicines.[9] For developing nations like India, where a large portion of the population struggles with healthcare affordability, balancing patent protection with the public's right to health is an ongoing policy challenge.[9]

Compulsory licensing is a legal mechanism designed to address this conflict. It enables governments to authorize third-party production of patented products, or the use of patented processes, without the consent of the patent holder under certain conditions. This mechanism can be crucial in making life-saving drugs more affordable and accessible, especially when they are priced too high for ordinary citizens or when supply is insufficient to meet demand. In India, compulsory licensing is covered under Sections 82 to 94 of the Indian Patent Act of 1970 and it allows for the production and distribution of generic versions of patented medicines in specific circumstances that meet public interest needs. Compulsory licensing is intended not to undermine innovation but to ensure that intellectual property rights do not come at the cost of human lives.[10]

India's position as a major player in the global pharmaceutical industry makes compulsory licensing particularly relevant. India is often referred to as the "pharmacy of the developing world" due to its significant production of generic medicines. Indian pharmaceutical companies supply affordable drugs not only domestically but also to other developing countries where access to high-priced, patented drugs is limited. By including compulsory licensing provisions in its patent law, India has established a legal

pathway to produce and supply essential medicines at lower costs, potentially easing the financial burden on patients and healthcare systems.

The need for compulsory licensing becomes particularly urgent in times of public health emergencies. The COVID-19 pandemic underscored the importance of accessible medicines and vaccines, leading to global calls for mechanisms that could bypass patent restrictions to address urgent health needs. The Indian Patent Act includes provisions that allow compulsory licensing in response to national emergencies or circumstances of extreme urgency. This aspect of the law aligns with the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement under the World Trade Organization (WTO), which grants member states the flexibility to prioritize public health over patent rights in emergencies.[11] The Doha Declaration on the TRIPS Agreement and Public Health, adopted in 2001, reinforced this position, stating that TRIPS should not prevent member states from taking measures to protect public health.

Despite these provisions, India has used compulsory licensing sparingly. The landmark Natco Pharma Ltd. v. Bayer Corporation case in 2012 was the first instance of a compulsory license granted under the Indian Patent Act. In this case, the Indian pharmaceutical company Natco applied for and received a license to produce a generic version of Bayer's patented cancer drug, Nexavar, at a fraction of the original price. The grounds for issuing the license included Bayer's failure to make the drug reasonably affordable and adequately accessible within India. This decision was celebrated as a victory for public health and set a precedent for interpreting terms like "reasonable affordability" and "public interest" within the context of compulsory licensing. However, subsequent applications for compulsory licenses have faced substantial hurdles, with only a few succeeding due to stringent legal and procedural requirements.[12]

Several challenges hinder the effective implementation of compulsory licensing in India. First, the process of proving that a drug is unaffordable or insufficiently supplied to meet public demand can be resource-intensive and time-consuming. Applicants must provide substantial evidence to satisfy legal standards, which include demonstrating that the patentee has failed to work the patent in India or has set prices that place the drug beyond the reach of the general population. This high threshold has deterred many potential applicants, limiting the practical use of compulsory licensing as a tool for improving access to medicines.

Another significant challenge involves determining fair compensation for the patent holder. The Indian Patent Act requires the Controller of Patents to set royalties, but it does not provide detailed guidelines for calculating them, resulting in uncertainty and frequent legal disputes. Pharmaceutical companies argue that low royalty rates fail to account for the high costs and risks associated with drug development, whereas advocates for compulsory licensing maintain that high royalties defeat the purpose of making medicines affordable. This lack of clarity has made the compulsory licensing process even more complex, discouraging both applicants and patent holders from engaging in it.

International pressure also complicates India's use of compulsory licensing. As a member of the WTO, India is bound by the TRIPS Agreement, which mandates minimum standards of intellectual property protection. While TRIPS allows for compulsory licensing, developed countries with strong pharmaceutical industries often pressure India and other developing nations to limit its use.[13] This is evident from the backlash India received following the Natco Pharma decision, as several pharmaceutical companies and trade groups argued that the move undermined patent protections. This global tension places India in a difficult position, where it must balance its international obligations with its responsibility to protect public health.[14]

Furthermore, judicial interpretation of compulsory licensing provisions has been cautious. Courts in India have adopted a conservative approach, emphasizing strict compliance with statutory requirements. For instance, in Lee Pharma v. AstraZeneca (2015), an application for compulsory licensing of the anti-diabetic drug Saxagliptin was rejected on grounds that the applicant had not satisfactorily proven the drug's unaffordability or insufficient availability. This decision, along with others, reflects the judiciary's inclination to prioritize patent rights and adhere closely to the letter of the law, making it challenging for compulsory licenses to be granted in all but the most clear-cut cases.

In this context, there is an urgent need to re-evaluate and reform India's approach to compulsory licensing to better serve public health goals. While the Patent Act provides a legal framework, its stringent requirements and procedural complexities limit the practical application of compulsory licensing. Addressing these barriers is essential for creating a balanced IP regime that respects patent rights without compromising access to essential medicines.[15] Potential reforms could include clarifying guidelines for determining royalty rates, streamlining the application process, and establishing more explicit criteria for affordability and supply thresholds. Additionally, promoting voluntary licensing and fostering public-private partnerships may offer alternative solutions that enhance access to medicines while respecting patent protections.

This paper will examine the existing legal framework for compulsory licensing in India, analyse key case studies, explore the challenges to effective implementation, and consider alternative approaches for balancing patent rights with public health. By addressing these issues, this research aims to provide insights into how India can strengthen its compulsory licensing mechanism, making it a more viable tool for addressing healthcare needs and fulfilling the right to health for its population. The paper also offers

recommendations to ensure that compulsory licensing aligns more effectively with India's dual goals of promoting innovation and ensuring affordable access to essential medicines.

Legal Framework for Compulsory Licensing in India

[16]Compulsory licensing under the Indian Patent Act (1970) aims to balance intellectual property rights with public welfare. Sections 82-94 outline the conditions under which compulsory licenses can be granted, such as if the patented product is inadequately supplied, unreasonably priced, or not sufficiently accessible.[17] The Indian government and the Controller of Patents hold the authority to issue compulsory licenses, especially in times of national health emergencies, reflecting the flexibility allowed by international agreements, particularly the WTO's TRIPS Agreement.[18]

Section 84 of the Indian Patent Act is critical, allowing third parties to request a license if three years have passed since the grant of the patent, provided that the reasonable requirements of the public are not being met. Section 92 expands on this by permitting the government to issue licenses during public health crises, a provision underscored by the COVID-19 pandemic. While these sections offer a robust framework for compulsory licensing, their practical use is minimal due to high evidentiary requirements and procedural complexities.[19]

The TRIPS Agreement, along with the Doha Declaration on Public Health (2001), legitimizes compulsory licensing in situations of public need, granting countries like India the right to override patents to ensure access to essential medicines. However, balancing these rights against patent protection obligations remains challenging, highlighting a key conflict in the global intellectual property landscape.

2. Case Studies on Compulsory Licensing in India's Pharmaceutical Sector.

a. Natco Pharma Ltd. v. Bayer Corporation (2012)

[20] India's first compulsory license was granted to Natco Pharma for producing a generic version of Bayer's cancer drug, Nexavar. Bayer's failure to make Nexavar affordable or adequately available in India met the criteria under Section 84. Natco's generic drug reduced the monthly treatment cost significantly, from over INR 280,000 to approximately INR 8,800. The case set a landmark precedent in interpreting "reasonable price" and "adequate supply," proving that compulsory licensing could be applied effectively to meet public health needs. It was also a significant test of India's stance on balancing patent rights with[21] affordability and accessibility.

b. Lee Pharma v. AstraZeneca (2015)

This case involved Lee Pharma's request for a compulsory license to manufacture Saxagliptin, a drug patented by AstraZeneca for treating diabetes.[22] The application was denied as Lee Pharma failed to sufficiently prove that Saxagliptin was unaffordable or inadequately supplied. The case highlights the stringent legal thresholds applicants must meet, showing the conservative approach India's patent authorities and judiciary often take in compulsory licensing cases.

Conclusion

[23]India's compulsory licensing provisions have the potential to make essential medicines more affordable, but they remain underutilized due to procedural, economic, and international challenges. To improve the effectiveness of compulsory licensing and align it with public health needs, the following reforms are recommended:

Simplifying the application process and reducing evidentiary burdens would make it easier for applicants to seek compulsory licenses. This could include setting clear guidelines for proving affordability and supply thresholds, reducing administrative delays, and fast-tracking cases involving public health crises. Establishing clear and fair guidelines for determining royalty rates would reduce disputes

and expedite the compulsory licensing process. A standardized model, perhaps based on international best practices, could provide greater certainty for both patent holders and licensees, encouraging a balanced approach to pricing. Promoting voluntary licensing and public-private partnerships between the government and pharmaceutical companies could expand access to essential medicines without requiring compulsory licenses. These partnerships could involve government subsidies or other incentives to encourage pharmaceutical companies to make drugs more affordable voluntarily. [24]Encouraging the judiciary to adopt a more flexible approach in interpreting compulsory licensing provisions could make it a more accessible tool for addressing public health needs. Clearer legal definitions of terms like "reasonable price" and "adequate supply" would support more consistent and health-focused rulings. Ensuring that compulsory licensing in India aligns closely with the Doha Declaration would reinforce India's stance on prioritizing public health. Educating policymakers and legal authorities on the flexibility allowed under TRIPS could help India better navigate international pressures while protecting its citizens' right to health.

In conclusion, while compulsory licensing offers a path to affordable healthcare, reforming its legal and procedural framework is essential to make it a practical and effective mechanism. By reducing procedural hurdles, providing clear royalty guidelines, and fostering collaborative efforts, India can ensure that compulsory licensing serves as a meaningful tool for equitable healthcare access.[25] These reforms would allow India to balance its dual commitments to intellectual property rights and public health, achieving a sustainable model that supports both innovation and affordable healthcare for all.

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Live-In Relationships and Social Stigma in India: A Legal and Cultural Perspective

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Abstract

Live in relationships are prevalent in India especially in urban cities today, but are highly stigmatized and legally not very clear. This paper compares and contrasts social perspectives and legal cases of live-in relationships, legal vulnerabilities faced by those living in the relationship, and the lack of legislation in this area. In view of qualitatively analysing the legal provisions, case laws and comparative international laws relating to live-in partners, the study identifies various risks emerging in context of inheritance, custody, maintenance and protection against domestic violence. Though the Indian courts have offered some form of commitment to live-in relationships, many areas are still not well protected and these individuals will not be protected to the required extent. The results therefore imply the necessity of legal enhancement for live-in partners' rights as well as stigmatization combating campaigns. Reforms of that kind could contribute towards a creation of a civilization that recognises the relevance of both traditional morality and personal liberty.

Key words,

Indian Courts, Live-in relationships, Maintenance, Social Acceptance, Social Stigma, Traditional Morality,

Statement of problem

In India live in relationships remain a subject of controversy as they strike at the root of established marriage culture or institution and so, the practice is stigmatized socially and officially recognized to a limited extent. People understand

marriage as the legitimate way for establishing the partnership, live-in relationships, on the contrast, are socially stigmatized and regarded as immoral. This social isolation leads to rejection by family members, pressure, and isolation of the people that are involved. In addition, much as Indian law recognizes cohabitation, the welfare of live-in partners is not well protected especially regarding the important areas that touch on inheritance, property rights, child custody, maintenance and even protection against violence. While some judicial decisions have provided some rights to live-in relationships these are just scraps few and far between. This absence of legal guarantee compounds the problems of live-in couples; which requires the reform of current laws, as well as the acceptance by society.

Research objective

For the purpose of understanding the legal and social issues of the lives of people in 'Live-in relationships' in India measuring the Social exploitation, lack of legal justice due to legal loopholes, drawbacks in the existing laws, need for legal reforms in providing rights and support to multiple kinds of family structures.

Methodology

Though this research uses a quantitative method of data collection and data analysis, its subject is grounded in Indian legal cases and scholarly articles about the social and legal issues surrounding live-in relationships in India, as well as the ideas of stigma, legal loopholes, and potential reform.

Introduction

Marriage though has been a key cultural practice in the establishment of societal, legitimacy of relationships, apart from being a foundation of family life in Indian population in which traditional family values form the core of social structure. Nevertheless, changing demographic trends led to by urbanization, economic productivity and increased exposure to global cultures meaningful relationships have evolved to include live-in relationships especially among the youthful

generation[1]. This shift does conflict with societal cultures as live in relationships does not follow the norm that marriage is formal, lifelong relationship institution. Therefore, cohabitation is frowned at because it is considered socially unacceptable for people of certain colors, shapes, and sizes, as well as an affront to traditional families.[2] This social exclusion leads to problems like rejection by family, friends, and work colleagues, social exclusion; and such psychological problems as depression, anxiety and other related disorders affecting individuals in live-in civil unions; all this points to the myriad social challenges faced by the individuals in live-in civil unions.

From a legal perspective, the position is not much better either. India legally does not sanction live-in relationships and partners in live-in relationships do not have legal rights and are not legally protected. For instance, the Supreme Court of India in Indra Sarma v. V.K.V. Sarma recently allowed limited recognition of live–in partnerships under certain circumstances; however, there are lots of gaps in laws.[3] These gaps are; succession, property, children, maintenance and order the protection against family violence, therefore leaving the live-in partners in a very precarious position in the event of break up or the death of the partner. Lack of legal recognition not only extends social disgrace but also tends to financial and emotional vulnerability for individuals into these relationships.

The present paper is intended to discuss the issue of social prejudice and legal uncertainty in the case of live-in relationships in India. Through exploring culture perceptions, case laws, and foreign counterparts, this investigation aims to underline the necessity of the legal change and to enhance, by providing moderation between individual's rights and cultural concerns.[4] It seems that such an approach might contribute to the creation of a socially inclusive environment, which will consider and embrace various families' forms, and at the same time, responds to the changed realities of modern India.

Social challenges: Impact of stigma

In Indian context specifically, live in relationships are strictly judged according to the moral and cultural standards, more stringently in small cities and villages where marriage is solely regarded as the foundation to respectability in the society. Live in relationships itself are considered socially taboo and come with numerous problems for the individuals including family pressure, loneliness and mental problems[5]. Women are most vulnerable, as cultures of virginity and patriarchy are still strong to this date. However, young people in urban areas are relatively more liberal with cohabitation, the couples still report feeling patronized, pressured into marriage, or just plain ignored.

Many people get stressed, anxious and socially isolated much to the lack of acceptance due to this stigma. For instance, the young adults in live-in relationships expenses may be rejected by their families, and people in such relationships may be ostracised from their communities further worsening their mental health. In light of this it calls for campaigns aimed at educating people and creating acceptance for non - traditional families that still faces a lot of stigma. They also include social activities that would enable consumer attitudes on cohabitation to be more accepting of such relationships.[6]

Legal Challenges: Gaps in Protections

The legal framework in India provides limited recognition and protection for live-in partners, leaving individuals vulnerable in cases of separation, death, or abuse. While the Protection of Women from Domestic Violence Act (PWDVA), 2005, extends some protections to women in live-in relationships, these are restricted to relationships that meet certain "marriage-like" criteria. For example, court rulings such as Indra Sarma v. V.K.V. Sarma (2013) have established guidelines for determining which live-in relationships qualify for protection under PWDVA.[7] However, these guidelines are inconsistently applied and insufficient in areas like inheritance, property rights, and child custody.[8]

Inheritance and property Rights

A live-in partner has no rights to a share of any property or possessions, as a married couple does; there is no guarantee to such a partner that they will not be left financially vulnerable should their partner die, or if the couple splits up. While these rights are not codified as legally enforceable rights, economically depending partners will have little to no protection when it comes to property accumulated during the relationship.[9]

Custody and Maintenance

Such children born to live-in partners do not make a statutory claim for custody and maintenance since the laws governing the family primarily address married couples. This can lead to cases where children are unable to fines or stable care givers that would otherwise be provided for in arch marital relationships.[10]

Domestic violence protections

Disabled people's advocacy organisation, PWDVA insists on their partners as 'in the nature of marriage' criterion before they can report domestic violence it protects its clients implying that many people do not get legal justice. All the women who are involved in any type of cohabiting relationships would be safe if all relationship types are protected under domestic violence laws.[11]

Such legal difficulties call for extensive changes to afford basic rights and legal protection to the people dwelling in live-in relationships; regarding property rights, child custody, and protection.

Implications for legal Reform in India

India needs legal reforms addressing the rights of live-in partners that will help the Asian country to increase the effectiveness of its legislation relying on its traditions and without violating the rights of citizens. Drawing from international models, India could consider[12]:

- Property and inheritance protections: At present, live-in partners have no legal right to property or inheritance

which makes economically dependent partners vulnerable — especially when it comes to separation of the union or death of a partner. India could ensure financial rights through inheritance and property by giving it to those partners who have been cohabiting for a longer period of time, therefore adding security to its citizens. Such legal reforms might require a specified minimum period of cohabitation before partners would be eligible, like with common-law marriage arrangements, and provide for the division of property and assets held jointly by those who meet this qualification.[13]

- Custody and maintenance: Determining the legal rights of a child born of live in parents, sometimes the kids need proper parental care so as to provide them with basic needs like food, clothing, and shelter, and this should be done by either of the parents who is capable of fulfilling the need or wants of the kid.[14]
- Expanded domestic violence protections: Strengthening PWDVA to include all domestic partnerships, providing legal gray area from abuse without having to meet the "marriage like" standard.

Such reforms would tread on the rights of those in live-in relationships thereby minimizing their legal and social precarity. When accompanied by social measures against stigma, these changes could contribute towards enhanced recognition of diverse family forms and acceptance of their existence within the Society of India and the recognition of the modern forms of relationships by the legal framework of the country.

Comparative legal analysis

Many countries around the world have formed legal structures for security of persons residing in cohabiting relationships and may be used as resource to inform formulation of the legal guideline required to protect the wellbeing of persons in live-in relationships in India.[15]

- France: Single people of same sex and opposite sex can in France enter into civil partnership known as Pacte Civil de Solidarité or PACS to get certain legal rights without marriage. PACS has rights such as testamentary rights, property rights and rights to tax reliefs. This framework could be adopted from the Indian model that for live-in partners provides a legal framework for couple without formal marriage.
- Sweden: Today, Sweden has Cohabitees Act (Sambolagen) that affords cohabitees rights, particularly financial rights in property with the result that partners are protected financially while residing together but not married. However, where there is a joining together and cohabiting, the living partner is privileged to the distributed resources, giving one a form of economic security if the partner dies. Same approach if implemented in India will likely resolve some of the risks that live-in partners experience mostly concerning property ownership and inheritance.
- United states: A few of the U.S. states acknowledge common law marriage and allow cohabiting couples, who have been together for some time and meet some conditions, the same legal status as a wedded couple. Such rights include: inheritance, maintenance and property rights. As in the case of common-law marriage, it protects a given couple in that they can be together legally without actually getting officially married, which could be useful to India while deciding over the legal rights of live-in relationships.

The foregoing international examples show how it is possible for India to prescribe laws that will extend these legal rights to live-in partners without any law necessarily defining the status as marriage. It is to be noted that introduction of certain aspects of PACS or the Cohabitees Act in India can go a long way in providing a legal status for live-in partners besides providing inheritance,

property, and maintenance rights to them and their children as well as opposite sides 'legal issues.

Recommendations

- Legal Reforms Ensuring Rights to Property and Inheritance of Live-in Partners:

Based on the stringent critical analysis of the scant legal framework of India, I would thus recommend that long-term live-in partners should have property and inheritance rights. Left out of formal rights, economically dependent partners are highly vulnerable towards financial instability. A policy model taken from France's Pacte Civil de Solidarité (PACS) or Sweden's Cohabitees Act would serve to be a perfect solution. These frameworks provide cohabiting partners with specific inheritance and property rights without the need for marriage, thus conferring assured long-term financial security to those in long-standing committed relationships.

- Legal Reforms Ensuring Property and Inheritance Rights for Live-in Partners:

Establishing Custody and Maintenance Rights for Children Born to Live-In Partners Because Indian family law essentially caters only to the rights of a married couple, the offspring of a couple in a live-in relationship are also uncertain regarding custody and maintenance. Clear guidelines must be made in order that children born in these relationships have entitlement to stable care and support without any consideration for their parents' marital status. Provisions relating to custody and maintenance for such live-in relationships would prevent children from suffering without support for mere financial survival and parental care, leading to the betterment of their welfare and stability.

- All cohabiting partners should also be protected by expanding protections for domestic violence: The protections under the PWDVA, 2005 exist as of now only for "marriage-like" relationships, thus excluding most of

those living in domestic partnerships. Generalization of these protections will ensure that every person in any form of domestic partnership is protected against domestic violence. It would eliminate the need to prove "marriage-like" conditions and let all victims of domestic violence in several forms of partnership have access to legal support and protection.

- Media Positivism: Normalize the Live-in Relationships: Media is the powerful tool that can make a lot of difference by changing the people's attitudes within society. Reducing stigma about such relationships can be done through balanced, positive facets of live-in relationships in television, films, and social media. This will make live-in relationships more relatable and acceptable as well. Media can bring about that kind of social change by healthier and valid live-in relationships in which more and more diverse forms of family are normalized and most importantly people feel accepted and understood.

Conclusion

India's progressive approach to live in relationships, especially in the metropolitan cities, cannot be taken out of context, for these kinds of relations are still socially taboo and legally frowned upon. This paper has examined the social issues related to the live in relationships, which are often accompanied by family disapproval, loss of social networks, and psychological distress due to the fact that such people tend to view marriage as the only acceptable form of a relationship. On a legal scale, live-in relationships are rarely formally recognised and oppressed live-in unions are particularly at high risk on issues of entitlement to inheritance, access to residences and properties, child parenting, alimony, and even domestic abuse laws, as such rights are not well articulated in the law.

Encouragingly, however, these court decisions have been limited. These are not adequate to meet the high demands that

arise from the realities that come with live-in relationships. Drawing lessons from the practices in France, Sweden, and parts of the United States, it is observed that the conducive legal regime for cohabitation does not necessarily conflict with the social expectations regarding marriage. Such models of international development indicate that live in partners in India can be meaningfully facilitated without any adverse effect on the marriage. Thus, the justice system in India can also be made capable of a society that values tolerance in terms of individual preferences and at the same time ensures its citizens' rights.

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The Growing Issue of Sex Trafficking of Women in India

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Abstract:
The nefarious human trafficking is a growing organized crime that is affecting every country and every state in some or the other way. Several reasons and causes have paved the way for the staggering growth of human trafficking which makes this crime a vast subject covering numerous diverse aspects. This paper highlights the main causes that lead to the sex trafficking of women and the measures executed by the Government, along with the different laws in place that aim to provide for the protection and prevention of human trafficking. This crime is a serious challenge to the economy and security of a nation which leads to violation of several human rights and other basic rights of an individual. This paper highlights that despite having so many legal standards in place, human trafficking and especially sex trafficking of women in India remains to be a prevailing issue with little or no accountability and reformations.
Keywords: exploitation, women, crime, security, human trafficking

Statement Of Problem:

Among the many offences in human trafficking— sex trafficking is a growing offence in India. Despite the several enactments in place, the crime continues to be committed in no fewer rates and convictions of offenders have not gone up at all.

Research Objectives:

- To discover the fundamental causes for the growing menace of sex trafficking of women in India.
- To analyze the existing legislations and measures executed by the Government in place for the sex trafficking of women in India.

Research Methodology:

This paper adopts the method of doctrinal research, focusing on the existing available literature and legislation. This further adopts the area of descriptive and partially analytical research as it aims at describing and highlighting the facts and data with the already existing information through the government databases, legal enforcements and enactments, and several other literatures. Further, it adopts a partial mode of analytical research as by analyzing the available laws and initiatives along with the data available, it can become the conclusion that despite of having extensive legislation and measures being taken to combat this crime, the enforcement mechanisms need to strengthen to get an actual proper result out of it. The study is limited to the extent of India and to the category of sex trafficking of women.

Introduction:

Human trafficking is not just a problem that evolved in the modern era but in fact has been going along for a long time and has developed into a modern world form of slavery and asexual exploitation. The crime of human trafficking is vast and has several reasons of occurrence across the globe or across the same country, thus including both inter-border and intra-border aspects. Trafficking is conducted for various reasons like bonded labour, prostitution, or other sexual exploitations, and debt bondage. Also, the factors leading to persons falling as victims for this crime can be divided as the push and pull factors. The major push factors include poverty, lack of education and need for a job and other socio-cultural practices including dowry and domestic violence. The pull factors majorly include the availability of better job

opportunities, with the high demand in the cheap labour market and certain promises of a better life which lure the victims as prey to this crime.[1] Even economically poor and less developed countries lead to pushing vulnerable people to countries where there are promises of better life and increased jobs by emigration leading to higher chances of this crime by fake assurances and corruption.[2] Human trafficking is a major human rights violation and nearly every country has been impacted by the same, wherein the countries are divided into a country of origin of the crime, a country that helps in transit for the crime to be executed or a country which is the destination for the victims.[3] Human trafficking is often committed with the main purpose and intention of financial or personal gains. One of the majorly accepted definitions for the concept of human trafficking is the one given by the United Nations Office on Drugs and Crime which refers to human trafficking as the act/process of recruitment, transportation, transfer, harboring or receipt of people of all ages and from all backgrounds, from around the different regions of the world of every gender be it men, women, children. This act is committed by means of deception, fraud or force with the aim and intention of exploiting the victims for profit.[4] UNODC further provides for information regarding human trafficking, the Protocol of 2000, and further the response towards such a crime and initiatives taken up like the Blue Heart Campaign, and the allotment of trust fund to help the victims of the crime.

From time immemorial, several documentation and incidents has proved that women fall under the category of vulnerable individuals who are more prone to violence, sexual assault and exploitation leading to it becoming a major section of human rights. Violence against women has taken many forms through the period of time, amongst which one of them leads to the organized crime of sexual trafficking of women which includes the transport, exchange and sale of women for sexual pleasures, prostitution or any other forms of sexual exploitation by means of deceiving them by false promises and

hopes or due to poverty selling their women or girl child in this racket.[5] In India, it is observed that human trafficking of women is mainly arising out of the socio-economic development of the country which compromises international, domestic and individual security and advancement. India as a developing country has always prioritized state security over individual safety and security, leading to the formation of these vulnerable groups of people like women who become prone to such organized crimes of human trafficking.[6]

The Problem of Sex Trafficking of Women in India:

It is stated that human trafficking is not a new form of crime but the widespread of it on a global level is something that is becoming more prevalent in the modern era as it is dependent on the market energy of demand and supply concepts in which profits are more in relation to the danger that persists therein. The concept of human trafficking for forced sexual purposes is one of the many facets of this big crime wherein the forced prostitution of women is just one portion of the crime.[7] India acts both as a source and destination for this crime. It includes trafficked women and girls from Nepal and Bangladesh and Indian women being trafficked to the Middle East and Europe for commercial sexual exploitation. Surveys showcase that the women victims involved in this crime are stuck and not able to get out of this due to poverty, lack of awareness or any knowledge, unemployment, lack of reintegration and rehabilitation facilities, the scare of being not accepted back in the society, and the pressure and power. It is observed that women and girls from different parts of different states of India are trafficked to foreign countries like Dubai, Oman, South Korea, Kenya, Thailand, Philippines etc. Dindigul, Tiruchirapalli, Chengalpattu in Tamil Nadu, 24 Parganas and Murshidabad in West Bengal, Purnea, Kishanganj, Patna, Madhubani from Bihar and parts of Maharashtra and Telangana are the most prominent places from which women and girls are trapped and exported for the purposes of sex trafficking.[8] As per NCRB

data[9], the statistics show that the number of cases reported for human trafficking in the year 2021 state-wise is around 320 in Maharashtra, 347 in Telangana, 201 in Kerala, 203 in Assam, 168 in Andhra Pradesh, 136 in Odisha, 111 in Bihar, 100 in Rajasthan, 92 in Jharkhand, 61 in West Bengal.[10]

Existing General Legislations Relating to Sex Trafficking:

The protection of human rights is very essential not only for the development, growth and security of an individual but also in turn essential for the development and growth of the nation. This has been thus protected by several international frameworks, the Constitution of India, and several domestic legislations. The problem of human trafficking as a whole thus is a violation of a great number of human rights and individual rights, violating several legal frameworks. When human trafficking is clubbed with prostitution, it leads to the most profitable illegal trade but at the same time the biggest aspect of violation of rights and laws. *Article 15 of the Constitution of India*[11]*,* provides for prohibition of discrimination on certain grounds like sex, place of birth, religion, race, caste etc. It leads to one of the biggest violations of *Article 21*[12] as the right to live with dignity and personal liberty is gravely stolen away in this offence and the victims are put into non-consensual and inhumane conditions to live and even if they are rescued, the society never lets them live their lives with dignity. *Article 23 of the Constitution of India*[13] provides specifically for the prohibition of human trafficking and forced labour which is gravely violated in the case of human trafficking that is still occurring at an increasing pace. Several provisions under the *Directive Principles of State Policy* are also further violated as a result of this crime. This includes *Article 39*[14] which provides for the safeguarding and prohibition of being abused and exploited which is very relevant for this crime as the victims herein are mostly coerced, forced, manipulated and abused into being trafficked resulting in various exploitations of them. Further, *Article 51*[15] provides for the duty of prohibiting and renouncing any practice that leads to the derogation of women

and the practice of women's sex trafficking even if tried to be accounted for is still prevalent in this Indian society.

In *People's Union for Democratic Rights v. Union of India, 1982*[16]*,* a public interest group sent a letter to Justice Bhagwati to start the People's Union for Democratic Rights, wherein the letter accused the Union of India, Delhi Development Authority, the Delhi Administration for violation of labor legislations and rights. The concept and meaning of the word "forced" are explained while understanding the term "forced labour" under *Article 23 of the Constitution.* It constitutes not only the legal or physical force but also any force that is a result out of the compulsion arising out of the victim's economic circumstances that leaves them with no alternative except to provide the services and labour as forced for.

In the precedent of *Budhadev Karmaskar v. State of West Bengal, 2011*[17] the sex workers' fundamental rights, and rehabilitation of rescued trafficked women were upheld and emphasized by the *Supreme Court of India.* It also directed the Central and State Governments to take initiatives and schemes under the Social Welfare Boards for the rescue, safeguarding and rehabilitation of sex workers and trafficked victims, recognizing their right to live with human dignity under *Article 21 of the Constitution of India.*

In *Apne Aap Women Worldwide Trust v. The State Of Bihar & Ors, 2014*[18]*,* the writ petition urging the Court's direction to order the State Government of Bihar for proper enforcement and application of the *Immoral Traffic (Prevention) Act, 1956* in lieu to the application *of Article 23 of the Constitution of India.* This precedent identified several other lacunas the anti-trafficking laws and units are facing in relation to its failure of proper enforcement, and proper functioning of the specific departments and units which is showcased through non-decrease in the number of trafficking cases, failure to identify the network of traffickers and provide

for proper rehabilitation facilities and protection to the survivors and the victims.

This thus not only violates Constitutional provisions and Fundamental Rights and infringes the Fundamental Duties but also leads to several violations of different domestic legislations and the *Indian Penal Code*, now *Bharatiya Nyaya Sanhita, 2023*. *IPC/ BNS* provides specific Sections after the Constitution of India to combat the menace of human and sex trafficking. *Section 111 of BNS*[19] defines organized crime and therein includes the human trafficking offence done either for the purposes of prostitution or for getting ransom. Further *Section 143 of BNS*[20] provides an extensive explanation as to what constitutes trafficking of a person which includes the act of recruitment, transportation, harboring, transferring or receiving a person/s but with the specific intention of exploitation whether it physical or sexual and will further include slavery, or anything like slavery, servitude, beggary or forced removal or organs. The Section further mentions such acts to be formulated with the use of threat, force, coercion, abduction, fraud or deception, abuse of power or inducement. Further, *Section 144(2) BNS*[21] imposes severe rigorous imprisonment for a minimum term of 3 years to a maximum of 7 years and will be charged with a fine, when such person is found to have knowingly engaged a trafficked person into any form of sexual exploitation.

The Immoral Traffic (Prevention) Act, 1956 is a legislation specifically issued in India to combat human trafficking. This legislation came as a result of a step to put into effect the United Nations International Convention for the *"Suppression of Women in Traffic in Persons and of the Exploitation in Others"*[22] as India signed it on 9th May, 1950 in New York. Under this Act, sexual exploitation of females and males is treated as a cognizable offence. It specifies the appointment of a Special Officer, and punishment for offences like attempting or procuring a person for the purposes of

prostitution and detainment of such victims, etc. but this Act fails to provide for the definition of human trafficking.

Steps Taken by the Government of India to Combat Human Trafficking:

The Government of India has taken several initiatives in order to combat this menace by firstly making it being divided into a four-fold approach which includes prevention, rescue, rehabilitation and reintegration of such victims. This is known as the *Integrated Plan of Action* as per the *National Human Rights Commission* which even further formed a task force for the same with its representatives also being from the *Ministry of Labour, Ministry of Home Affairs, Ministry of External Affairs, Ministry of Women and Child Development, UNICEF, Panchayati Raj, National Commission for Women,* etc.[23]

The *Ministry of Women and Child Development* launched the *Ujjawala Scheme* in order to combat the issue of human trafficking which is mainly victim-centric, focusing on the rescue, rehabilitation, and re-integration of the victims of commercial sex trafficking. This Scheme led to 254 projects which included 134 Protection and Rehabilitation Houses in the country for these victims as per the data recorded by the Press Information Bureau of the Government of India in the year 2019.[24]

The Ministry of Home Affairs with the United Nations Office on Drugs and Crime and the Government of India, has jointly sanctioned a project and comprehensive scheme named *"Strengthening law enforcement response in India against Trafficking in Persons through Training and Capacity Building".* This initiative talks about the establishment of 330 Anti Human Trafficking Units in the country, along with the usage of Training of Trainers for special training for around 10,000 police officers. This training and workshops is another initiative on the regional, state, and international levels to combat human trafficking.[25]

The *Anti-Trafficking Nodal Cell* established by the *Ministry of Home Affairs* helps to deal with human trafficking

matters and the required law enforcement in order to combat and respond to the crime. Whereas the specific legislative, welfare and promotional aspects of human trafficking combatting are covered by the *Department of Women and Child Development*. The Cell provides certain advisories, guidelines and directions to the different States and Union Territories in order to tackle the human trafficking issues including holding state-level Conferences and judicial Colloquiums to train the officers and spread awareness. It also connects and combines with all the other Ministries to discuss, suggest and uphold steps to be taken in order to prohibit the offence of human trafficking.[26]

Conclusion:

The reported cases as per NCRB database showcases the number of women trafficked from India in the year 2020 to be around 784 and that of the year 2019 to be 923[27]. As per the Crime in India Report of 2022 by NCRB, it is observed that the statistics show the conviction rate for human trafficking is very low with a percentage of 22.2 in the year 2022, with 95.1 percent of pendency cases.[28] Human trafficking is a global menace that infringes the basic Human Rights of an individual and leads to several diseases and traumas in the victim. This leads to becoming a threat to the peaceful lives and security of citizens of all countries.[29] Though the *Constitution* gives varied rights to safeguard individuals it is on the judiciary to enforce the same and provide guidelines to be followed on which proper checks and balances should be ensured.[30] All the legislative steps and initiatives taken by the Government of India, along with the different established Ministries make it certain they are aware of this problem and are trying to combat it by way of enactments and different schemes and initiatives. But the problem lies in the fact that there are laws in order to combat the situation, yet those laws are not implemented in a proper way and similarly, the schemes and other initiatives have started but proper checks and controls the same to

eradicate the crime and identify the group of traffickers is failing.[31]

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A Study on need for Legislative Measures to Regulate Digital and Cinematic Content: Addressing the Influence of Media on Criminal Mindsets

By

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Abstract

The influences of the digital and cinematic media in society have been of much debate, especially with regards to the role they play in defining criminal mindsets. Digital and cinematic media have revolutionized the world with its exponential growth in India. The drastic growth of digital media platforms has introduced significant challenges in regulating content that may influence criminal behavior, shape public perceptions of crime, and media influence as a catalyst in inspiring criminal acts in society. The intersections of media, crime, and law attract so much research interest, this paper analyses the current regulatory structures by taking into consideration critical gaps in the Indian approach towards mediating media oversight.

The study bases its analysis on theoretical perspectives from media criminology, socio-legal studies, and empirical research through a pilot study (survey) was conducted to examine public perceptions across various illustrating the highly complex effects produced by media influence on criminal mindsets. Finally, the paper proposes that a comprehensive legislative framework be devised by clearing up the ambiguities in definitions of terms such as **"media" and "content,"** so that circulation of such content does not

create adverse connotations of such content. Outcomes from the study validate the call for adaptive policies to regulate portrayals of violence and crime, underlining the point that well-crafted legislation can help bring down real-world consequences of such content significantly and protect the welfare of society.
Keywords: Content influence, criminal behavior, criminal mindsets, digital media, freedom of expression, India, Media Act, media criminology, media regulation, OTT platforms, public perception, socio-legal studies, statutory body.

Introduction

1.1 Background and Rationale of the Study

Between **2020 and 2022**, India reported a total of **35.61 million** cognizable crimes under the IPC. Crime against human body is the highest percentage of total IPC crimes at 32.5% followed by miscellaneous at 29.2%, property at 23.6%, and document/property marks at 4.8%. The lowest percentage of 1.6% was for offences against public tranquillity that indicates varied nature of criminal activities in India.[1]

The Indian media consumption scenario has drastically changed in the wake of digital platforms, over-the-top services and social media coming onto the scene. Everyone has unprecedented access to everything. While the democratization of content has guaranteed creative expression (within limits) and broad access to information, it also poses some difficult questions about how we regulate content that may change perceptions of crime and even promote criminal acts. The **"copycat crimes,"** in which offenders replicate high-profile offenses depicted in the media, are the most potent form that unrestrained content that can induce a response from the public[2]. The digital content is continually sieve-like into all the aspects of one life and hence, it reinforces the need for deconstructing the concept of balance between such content and the balancing act done through a regulatory framework to monitor content regulation and its impact on criminal behaviour.

1.2 Issues with the Current Regulatory Framework

The current Indian media laws such as the **Information Technology Act**[3], the **Cinematograph Act**[4] and the **Cable Television Networks Regulation Act**[5]**,** along with the new **Broadcasting Bill 2023**[6]**, 2024, The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021**[7] do not rise to an appropriate level when addressing OTT platforms and digital media content. According to estimates, OTT platforms in India generated **Rs. 2019 crore** in **2017** and by **2022**, that amount is expected to rise to **Rs. 5595 crores**.[8] In addition, digital streaming services overtook the movie business to become the third- largest Indian entertainment industry in **2019**. According to estimates, the number of OTT platform subscriptions surpassed **50 million** for the first time in **2020**.[9]

Furthermore, the OTT and Social Media Digital content escapes all traditional facets of censorship and this has an effect on mismatch in their controls practices and public accountability also. For example, the ambiguous definition of **"media"** and **"content"** in the Indian legal system has caused interpretational cloudiness making it impossible to enforce; therefore such hazardous content escapes regulation. In a fast-moving digital landscape, the absence of precise legal language further makes it painstaking to secure a clearer path for media governance.

1.3 The Need for a Media Act and Statutory Regulatory Body

In contrast to this backdrop, the paper argues that a comprehensive Media Act is the need of the hour. Although the present body- CBFC[10] **(Central Board of Film Certification)** exists, the powers are general in scope, even though they confirm content regulation, precisely because it impacts on free expression, requires stronger standards than mere guidelines. The body — a quasi-judicial one with an almost-independence, yet answerable to the Parliament similar to established statutory bodies such as the **Competition**

Commission of India[11], Reserve Bank of India[12], Insolvency Board of India[13] and the Securities and Exchange Board of India[14] — would look at regularizing media regulation; providing a much-needed clear-cut framework for regulations, rules, and procedures not only limited to theatrical release, television broadcasting but also to OTT platforms, social media and other emerging platforms.

Indian legislative frameworks can also think of clearly defining the terms **"media" and "content"** with an inclusive and non-exhaustive meaning under this act, which will aid in the preparation of a more progressive and efficient framework of law that is likely to defeat both the challenges prevailing at present as well as future challenges in media regulation and achieving a balanced approach between creative freedom along with substantial societal interests, free from political agenda.

1.4 Statement of Problem

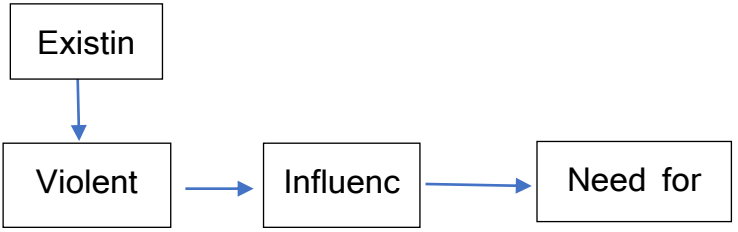
The increasing proliferation of digital and screen media demonstrates a clear inadequacy for a comprehensive, systemic policy toward content regulation across platforms, especially with regard to the influence of media on criminal behaviour and inspiring social ideas of crime. The **Information Technology Act[15] and the Cinematograph Act**[16] are outmoded and inadequate for addressing such complexities.

Additionally, the terms media and content are so general with an incredibly low standard of definitional specificity, which the researcher believes should be required for widespread regulation and enforcement of such usages of the media. Such a vacuum is prone to abuse by the media to potentially normalize, glamorize, or even incite criminal behavior, underscoring the need for a clear, structured, and effective regulatory approach that is well-implemented, and goes hand-in-hand with cultural background of India specifically.

1.5 Research Design and Framework:

This study is conducted to identify the complex relationship that exist between media content and criminal

mindsets there by establishing the need for Legislative Measures to Regulate Digital and Cinematic Content. The various factors contributing to study are Media Influence on Behaviour, Legislative Framework, Criminal Mindset, Content Regulation, and Public Perception.



However, the research uses a combined method of primary and secondary data collection. The research framework used in the study includes comprehensive review of existing literature on media influence on behavior, legislative measures in place, and criminal mindsets. Also, a survey was conducted to gather data from a broad audience, to focus on their perceptions of media content and its influence on behavior. A quantitative analysis was conducted to analyse the extend of media influence on behaviour. An extensive study of the existing laws and regulations related to media content was also included to identify the need and the existing gap and thereby propose specific legislative recommendations.

1.6 Research Methodology

To collect the data to make the study more accurate, the researcher used a survey approach and designed a questionnaire to collect the data related to our research problem. The target population was above the **age of 18** and included people from all walks of life, including students, professionals, and different professions. For the survey, there were **240 sample** sizes categorised according to age, ranging from **18 to 55 years** to investigate the study.

A comprehensive questionnaire was developed to cover every aspect of the study including **23 questions** focusing on different parameters into various categories.

Limitations of the study:

This study is limited to study the Media Influence on Behaviour, the awareness amongst respondents towards the existence of Legislative Framework, the need for Content Regulation, and the Public Perception about the impact of violent content on the criminal mindset. The study neither focus on the impact of such content on vulnerable population like child and adolescent nor it collects the stakeholders perspective such as lawmakers, media producers, psychologists.

1.7 Research Questions

This study is guided by the following research questions:

1. How does unregulated digital and cinematic content influence societal perceptions of crime and criminal behaviour in India?
2. How can a statutory regulatory body address these challenges, effectively balancing public safety and reducing crime?
3. What gaps exist within India's current media regulatory frameworks, and how do they impact media governance?

1.8

Hypothesis 1: Frequent consumption of digital or cinematic content depicting violence, crime, or illegal activities leads to an increased criminogenic thinking and behaviors among viewers.

Hypothesis 2: Repeated exposure to media content with criminal behaviour influences youth to commit a crime as compared to the individuals not exposed to such content.

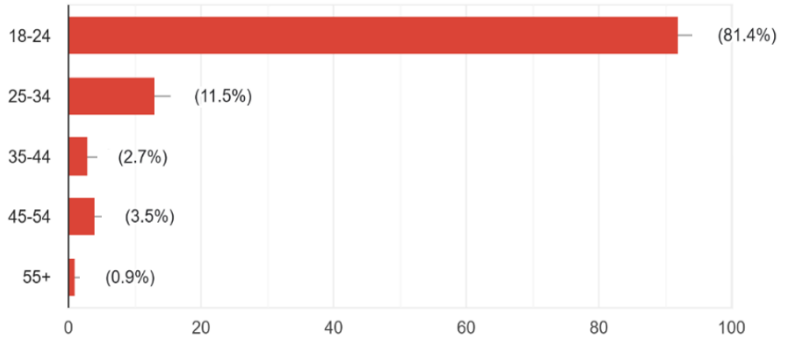
Hypothesis 3: An adequate legislative framework that regulates the portrayal of violent or criminal acts in digital and cinematic media significantly reduces the influence of such content on real-life crime rates.

4. Data Analysis:

As per the study conducted on the research titled "**A Study on need for Legislative Measures to Regulate Digital**

and Cinematic Content: Addressing the Influence of Media on Criminal Mindsets" data was collected from 240 respondents that had divergent representation cutting across all the aged groups, genders, and geographical locations. Thereby, the diversity supports the generalization and validity of the findings. The account for the data collected as follows: The details of the data collected are as follows:

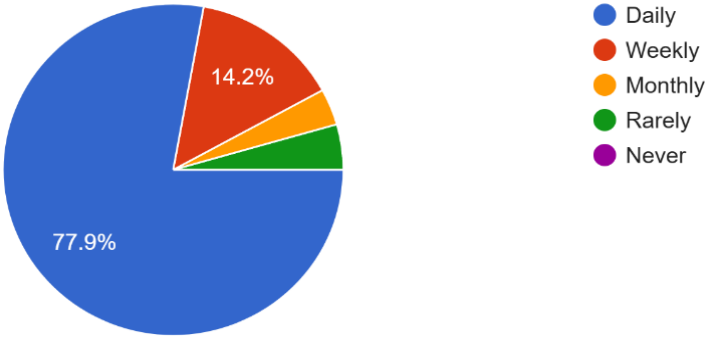
Fig 1: Age of respondents



The graph of age distribution shows that **81.51%** of the respondents fall under the **18-24 years** category, and tapering percentages ensue **as the respondents' age increases.** Young adults are typically the highest consumers of digital media also this demographic is often considered most susceptible to media influence.

Fig 2: Occupation of the respondents

Fig 3: Media consumption pattern

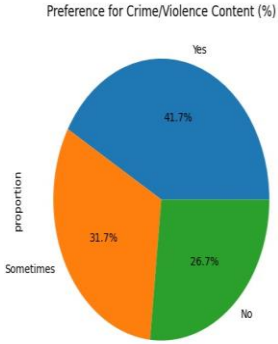


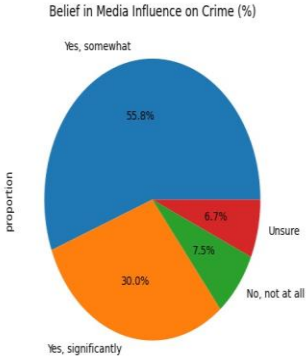
Media Consumption Patterns

The data shows that **78.15%** of respondents consume media on daily basis, that indicates **High exposure** to digital and cinematic content and its potential for significant media influence on behavioural patterns influenced by crimes.

The Content Preference reveals that a significant portion of respondents **(50%)** prefer watching content that depicts violence, crime, or illegal activities, with **38%** preferring it **"sometimes".**

Impact of such content on thoughts and emotions of respondents after consuming violent or criminal content suggests that **42%** occasionally noticed a change in their thoughts or emotions after such consumption.





Analysis and Discussion

Findings of the study:

From the analysis, it has been observed that the respondents' Perception of Media Influence on Real-life Crime (%) that portrays criminal behaviour can influence real-life crime agreed with **55.4 %,** with significantly **30.252101** not agreeing, while **6.7% were Unsure**.

Perceived Correlation with Violent Crime Rates (%) revealed that there is a correlation between media consumption and an increase in violent crime rates, as **46.2%** Agree, **26%** are Neutral, and **16%** Strongly agree. Even though **11%** disagreed.

Data also revealed that a significant majority (**85.71%** combined **"Yes, somewhat"** and **"Yes, significantly"**) believe media can influence real-life crime. Only **7.56%** completely reject the media-crime influence connection.

The study also highlighted the **Correlation of media consumption with Violent Crime Rates,** with **62.18% (46.22% Agree + 15.97% Strongly agree)** perceiving a correlation between media consumption and violent crime rates. In comparison**, 26.05% remain neutral**, suggesting a need for more research and awareness and Only **11.76% disagree** with this correlation. There also exists a strong perception of media influence that supports the need for legislative measures.

5.1 Media as a Constructive and Destructive Force in Society

There are researches that prove media played an educational function at that time, with uncontrolled coverage likely causing desensitization or even a mimic; media, culture, and crime connect through cultural criminology zeroing in on how media creates stories of fear, danger, and policing. For this reason, it is also very contentious considering media portrayals mould public views and have an impact on criminal justice policies.[17] Just like traditional media social media and streaming services can mould society's views on crime and violence. This makes regulatory oversight necessary since

most of such OTT platforms lie outside the traditional arcana of censorship in India. **Article 19 of the Indian Constitution**[18] the **Honourable Supreme Court**[19] determined that age-restricted film censorship is a legitimate use of authority for the sake of public decency, morals, etc. and does not provide an absolute right to free speech. Limitations to exercising the right, if imposed by law, include anything that could jeopardise India's sovereignty and integrity, state security, friendly relations with foreign countries, public order, decency, morality, contempt of court, defamation, or incitement to an offence. However, there is a code and protocol for both cable television and films. As a result, there is every reason to regard OTT material equally with films and cable TV. For starters, the lack of a regulating system for OTT content may contradict the equality before the law principle entrenched in **Article 14 of the Constitution**.[20]

5.2 Censorship vs. Self-Regulation

The Cinematograph Act and Information Technology Act set the basis for content regulation. However, as ***Chawla and Buch (2023)*** argue, the debate between censorship and self-regulation is ongoing in India, where OTT platforms present unique challenges for law enforcement and policymakers. The recent frenzy over some of the new shows, fuelled by Over-the-Top (OTT) platforms have given rise to debates around self-regulation and censorship.[21] A balanced approach, as a precursor to self-regulation versus censorship, will necessitate that one respect consumer autonomy as well as ensure meaningful content creation. The model of self-regulation already in practice globally gives scope for an intermediate option where overreach by the government is avoided without holding accountable the OTT platforms. Future research will have to evolve the follow-up options emerging from this law and their global implications for different digital platforms.

5.3 Case Scenarios: Media Influence on Crime in India

Movies are regarded as one of the most essential forms of entertainment nowadays, particularly in our country, where

there are few other options for entertainment. Movies, as a medium, are not just a low-cost source of entertainment, but also one of the most influential and potent tools for exploiting viewers' minds and ideas. The **Sacred Games[22] and Tandav[23]** controversies may have served as a useful reminder to India that it is time for a thorough overhaul of current regulations that squarely balance creative freedom while ensuring that free speech restrictions envisioned by the Constitution's drafters are enforced in a robust yet non-arbitrary manner. As a result, while there is a need to establish a regulatory framework for OTT material, the grounds must be clear, precise, well-defined, and universally applicable to all sorts of content on all platforms. Vague and overbroad content does not find judicial favour, as evidenced by a Supreme Court case[24] in which **Section 66-A of the Information Technology Act of 2000**, which sought to criminalise **"threatening" information** posted online that causes **"annoyance"** or **"inconvenience,"** was ultimately struck down as unconstitutional.

Crime news is over-sensationalized, as have certainly been the Bollywood movies; they have certainly taken a toll on the criminal activities in India. Crimes motivated by movies like **'Dhoom'** are pointers towards dangerous imitation of activities actually being committed in films. The criminals in Uttar Pradesh have reportedly confessed to drawing inspiration from movies and weekend soap operas before committing thefts and other crimes.

More importantly, through extremely glaring murders-for instance, the **2012 Delhi gang rape case**[25]-the media gave heavy coverage but simultaneously brought public outrage to the force and changed policymakers' attitudes towards change through rapid legislative interventions **(BBC News, 2022)**. In doing this, it displays the very immediate impacts of media on governance but leaves one questioning whether such steps really deal with the root or systemic problems in society.

5.4 The Role of Social Media: Amplifying Crime and Justice Narratives

While important tools always have been used in shaping public perceptions about crimes and the justice system in India - especially social media like *Twitter, Facebook, or Whats App*, this means that they also just happen to be channels that operate largely unchecked, feeding higher levels of rumors and sensationalism. The cases of *Indian mob lynching in 2018*, wherein false news regarding child kidnapping spread through WhatsApp, showed how perilous digital platforms without checks are. *Napoli* underlines how algorithms on those platforms escalate the nuisance content of the platforms, thrust the public into hysteria and reactionary policy decision making, cases often ending up ineffective in the long run. It underlines how imperative it has become to develop strict regulatory frameworks that don't only hold the platform responsible for its role in user-generated content but also safeguard freedom of expression.[26] This may include strict guidelines on content moderation in the Indian context, greater transparency regarding platform operations, and public campaigns against the spread of misinformation.

In India, successive governments held censorship as a panacea for the preservation of public morals According to**,** cinema censorship is defined as 'a performative dispensation,' whereby censors act as the arbiter of popular opinion, assigning value to cultural texts in mass-mediated cultures. The nature of such censorship involves the preservation of opportunistic cultural norms of the state, which are intrinsically subjective and malleable. *Mazzarella* states that cinema has **'open edges'**, by means of which it addresses diverse audiences and provokes a broad gamut of feelings, beyond the reach of ruling ideologies.

Thus, in India, successive governments have held censorship as a panacea for the preservation of public morals **(Mehta 2021)[27].** According to **Mazzarella (2013)[28]**,cinema censorship is defined as 'a performative dispensation,' whereby censors act as the arbiter of popular opinion, assigning value to cultural texts in mass-mediated cultures.The nature of such

censorship involves the preservation of opportunistic cultural norms of the state, which are intrinsically subjective and malleable. Mazzarella states that cinema has **'open edges'**, by means of which it addresses diverse audiences and provokes a broad gamut of feelings, beyond the reach of ruling ideologies.

7. Recommendations

7.1 Establishing a Dedicated Digital Media Regulatory Body

India's existing regulatory framework is largely based on the traditional media model. A dedicated regulatory body for digital media, especially OTT platforms, could address the unique challenges posed by digital and streaming content. This body should balance creative freedom with accountability, aiming to protect vulnerable audiences from harmful content while ensuring that media content creators maintain their freedom of expression. This calls for a multi-pronged approach that bridges the gap between immediate reaction and sustained societal change, including *educational initiatives challenging gender stereotypes, consistent media representation of gender equality and community engagement* dismantling society's accepted norms. Legislative reforms need to be complemented by grassroots efforts to work toward a real and necessary shift in public attitudes.

(1) Enhancing Public Awareness and Media Literacy

Usage of Media literacy-educative curriculums and public campaigns towards capacities, especially critical thinking, will enable citizens to review material much better and avoid misinformation.

(2) Strengthen Self-Regulation Mechanisms for OTT Platforms

Self-regulation mechanisms of OTT should be strengthened by presenting standardized rules on the presentation of sensitive content, not to restrain creative freedom but to ensure responsibility.

(3) Implementing a Tiered Content Rating System for Digital Media

A multi-level rating system from cinema ratings may guide viewers on the correct choice about view materials particularly for young adults and vulnerable groups.

(4) **Addressing Misinformation and Digital Crimes through Targeted Policies** Fighting information misrepresentation and other digital crimes may require measures such as content labeling, controlling rumors, and advancing collaborations between the platforms.

Updating regulatory frameworks periodically by an independent committee will thereby ensure fitting of changes to the legal and technological world. **To further:**

Regular Review of Regulatory Frameworks to Match Technological Advancements

7.7 Proposal for a Comprehensive Media Act and Statutory Regulatory Body

Rationale for a Media Act

Empirical evidence from this research study raises questions on whether the present laws in India- such as the **Cinematograph Act** and more recently the **Information Technology Act** along with the **Rules** as discussed in detail - are strong enough to respond to the dangers that are coming up from digital or OTT content. What is needed is an act specifically to create a better legal structure responding to modern media forms and balancing considerations of public welfare and defence of freedom of expression.

A borrowed statutory body from other statutory institutions like would have the effects of standards and standards in ethics and law on media dissemination, guard against malignant content, and bring responsibility. From empirical studies, it appears the following functions are necessary:

1. **Overseeing and Enforcement:** Oversight practices of such nature should ensure no violence- or other crime-related content is spread. They also include gaps in mechanisms of enforcement that are observed.

2. **Setting rules**: guiding how to content moderate digital platforms would standardize the oversight practice in digital media and would promote responsible content generation, just like the best international regulatory models would show.
3. **Media Literacy Programs:** Similarly, the money policy of RBI has been effective enough to reduce the vulnerability of the economy for poor money management. Media education programs would make the public less vulnerable to misinformation.
4. **Grievance Redressal:** An empowered redressal mechanism with all authority is important in satisfying legitimate public grievances, as established by incidents with the implementation of 2021 IT Rules.
5. **Adaptive policy development:** Empirical trends describe the fast pace of development of digital technologies and require a more adaptive policy framework by a dedicated Research and Development (R&D committee) to regulate emerging technologies such as showcased through media.

8. Conclusion

Future scope of the study:

The study could be further conducted to understand the need for such regulation by collecting the viewpoints of various stakeholders like lawmakers, media producers, psychologists. Similar study could be conducted in different parts of the world to get a wider perspective of the public in the broader light. There can be several other constructs that could be added to the research framework to understand the other dimensions.

This paper addresses the proximity of digital content to cinematic content with regard to the minds of criminals. The advent of OTTs and social media in India opened new opportunities as much as created problems in handling the type of contents that can evoke crime. As stated already, the current and existing legislations like the Cinematograph Act and the IT Act form a base but are insufficient to tackle all the vagaries of

digital media. A Media Act and statutory body specially entrusted with regulation of media would be a great leap forward toward responsible media regulation. Drawing from the best practices at the **CCI, RBI and SEBI**, such an institution will bridge the gaps which the current legal framework leaves open to surmount the challenges which modern media poses through film and digital media. By fostering a regulatory environment that emphasizes both accountability and creative freedom, this initiative would ultimately contribute to a safer and more informed media landscape in India. While part of an emerging global trend in regulatory governance with specific intent to create formal frameworks for addressing public grievances against digital platforms, the IT Rules are somewhat unique in blurring commercial, protectionist, and ideological purposes.

Unlike frameworks of either the ***United States, Europe, or China***, the approach taken by India injects considerable ambiguity.

Such ambiguity thrusts a precarious balance between regulatory intervention and freedom of expression on one hand, and commercial interests and ideological control on the other. Therefore the research concludes by emphasizing that such ambiguities will lead to regulatory practices that seriously choke creative diversity while empowering those voices that fall within the ideological domain of the dominant patrons. Aiming at such a goal, the paper develops into making a comprehensive analysis of the empirical data, case studies, legal frameworks, and media theories which underline respect for creative freedoms while protecting public safety. Hybrid approach in the future could, therefore, be envisioned that draws from all three strands of self-regulation, enhanced media literacy, targeted misinformation control, and a dedicated digital regulatory body to create a more responsive and effective framework. Highlighting that there needs to be appropriate balance in the

media landscape that will continue to evolve while fostering a socially responsible environment.

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The Implementation and Impact of Armed Forces (Special Powers) Act (Afspa) in Different States of India: A Comparative Analysis

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Abstract

The Armed Forces (Special Powers) Act (AFSPA) has influenced a considerable debate around the country on the question of the balance between national security and the rights of the civilians of the states where it is implemented. The Act empowers the armed forces with additional powers to tackle the insurgencies in disputed areas without any delay. This, in a way, ends up in the armed forces taking steps that directly or indirectly affect the rights of the civilians. Thus, the implementation and impact of AFSPA have raised numerous questions in the minds and hearts of the civilians who have been impacted and affected by it, more than the reasons and results for the insurgencies in their areas.

Additionally, the Act has influenced the governance, social order, and, eventually the civil-military relations across the country since its implementation and application. It is important to understand its impacts for a better reformation; it is the need of the hour, resulting in a contemporary issue, since the powers provided under the Act have major and significant concerns regarding its authenticity and validity in accordance with the laws and the Constitution of this country.

Therefore, this paper delves into such concerns regarding its implementations in various states of India and the impact of

such implementations not only on the civilians but also the military and the armed forces.

Keywords: AFSPA, disputed areas, internal security, men in uniform, human rights.

Statement of Problem

The powers and authority, namely the ability to examine and search premises without a warrant, make arrests without a warrant, and use deadly forces and measures as and when required, granted or provided under AFSPA to the 'men in uniform' are so extensive in nature, causing arbitrariness and abuse of powers. Despite the fact that these measures were meant to ensure security, they have had several unfavourable and arbitrary effects that raise questions regarding the balance between individual rights and national security. Above that, its prolonged implementations, people grow distrust of the government, leading to conflicts.

The problem this study addresses is the complex nature of this Act, impacting the civilians of the areas where it is implemented in the name of restoration and upliftment of law, order, peace, and tranquility, and for the purposes of internal security.

Research Questions

The following are the research questions identified:

i. How are the provisions of AFSPA implemented as a measure to suppress insurgency, especially in the northeast, when it has been withdrawn from various other states?
ii. How does it impact the civilians and the country as a whole?
iii. How can the negative impacts be mitigated?

Objective of the Study

The following are the research objectives:

i. To examine the implementation of AFSPA in various states.
ii. To evaluate the impact of the application of AFSPA.

iii. To recommend and suggest policy changes for the mitigation of the adverse effects of AFSPA.

Methodology

The research paper is based on a doctrinal study, along with qualitative research of primary and secondary sources. The data collected are from sources, namely relevant bare Acts, government notifications, documents and related reports, books, journal articles, book reviews, related case laws, relevant case studies, along with pertinent international conventions or treaties.

The study referred to above is to determine and ascertain the present scenario of the implementation and impact of AFSPA in various states of India. There will be a comparative analysis of the impact of the implementation and application of the Act in such states.

Limitations of the Study

The paper is limited to the states where the Act is or has been implemented in India, providing a comparative analysis regarding its implementation and its impact on civilians as well. The research also lacks insights into the subjects of this legislation due to the lack of field study and personal interviews to get the ground reality of the true and actual state of matter. Further, the veracity of secondary sources also transcends to the present study. Moreover, the limitations and scope of those secondary sources exist in this study.

Chapter I: Introduction

The Armed Forces (Special Powers) Act, popularly known as AFSPA, is a controversial and contentious legislation. It was enacted as a result of addressing the security challenges due to insurgency in various disputed areas of India by the then governments. It was implemented to restore public order and peace and resolve the law-and-order situation in the disturbed areas.

The history of AFSPA dates back to the colonial era. The Britishers promulgated the same as an Ordinance[1], for the

purpose of subduing the Quit India Movement. This was replaced by the Armed Forces (Special Powers) Act of 1958[2].

The ordinance later became a base for four more Ordinances for the states of the then-Bengal[3], the then-Assam[4], the United Provinces[5], and East Bengal[6] in the year 1947, due to reasons of internal security during the time of the partition of India. The Acts which replaced these Ordinances were repealed in 1957. However, these were re-enacted due to the Naga insurgency, as the Armed Forces (Assam and Manipur) Special Powers Act of 1958[7], to suppress the Naga armed rebellion, enforced on September 11, 1958. This Act is still in force.[8] The Act has been enacted by virtue of the constitutional powers of the Central Government to protect every state from internal disturbance under Art. 355[9].

However, AFSPA was initially implemented in the Naga Hills of the northeast of India, it was later extended to all other northeastern states. The Act was also extended to Punjab and Chandigarh, and Jammu and Kashmir.

Although the Act has been amended, its core provisions have largely remained intact, which has become a topic for debate for a long period of time. The main purpose of the enactment of this Act was to empower the armed forces or the men in uniform to restore and secure law and order in the disturbed areas which were affected due to insurgency. Resulting in the maintenance of internal security. The armed forces were empowered with additional authority and powers to handle extraordinary situations with the least delays and major destructions in such disturbed areas.

The authorities have the right to search and seizure or arrest without a warrant in the disturbed areas, resulting in the arrest of any and many, as a consequence. They even had immunity from prosecution, which has now, however, been held unconstitutional, for the acts done by the military personnel in the course of their duty, and if any proceedings were to be initiated, prior permission from the government was to be sought.

Chapter II: Legal Framework And Key Provision Of Afspa

AFSPA has been enacted "to enable certain special powers to be conferred upon members of the armed forces in disturbed areas in the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura."[10]. Thus, the Act extends to the whole of the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura.[11] The "disturbed areas"[12] are determined by the government in line with the Disturbed Areas (Special Courts) Act, 1976, which states that once an area is declared "disturbed", it has to maintain the status quo for a minimum period of three months. For an area to be "disturbed", it has to be a state of internal unrest, insurgency, disturbance of peace and tranquility and an area where the lives of the civilians are at threat, due to the disputes between or among, the members of different religions, language, racial, caste or communities. Further, the Act provides "special powers" and authority to the armed forces, also known as the military forces or the men in uniform, and the air forces operating as land forces, including any other Union armed forces[13], to suppress insurgencies and restore peace and tranquility in the disturbed areas across the country. These special powers are bestowed on any commissioned officer, non-commissioned officer, warrant officer, or any other person of equivalent rank in the armed forces, who may, in the disturbed areas, carry out the following:

To fire or shoot or use other forces against any person who is acting in contravention of any law or order for the time being in force in the disturbed area like the prohibition of the assembly of five or more persons or the carrying of weapons or such things which is capable of being used as weapons or of fire-arms, ammunitions or explosive substances. The forces may use such powers even if it causes the death of such contravening person. However, such powers have to be exercised after giving due warning.

To destroy or disrupt any arms dump, prepared or fortified position, or shelter from which armed attacks are either made or likely to be made or are attempted to be made. They may also destroy any structure that was used as a training camp for the armed volunteers or was utilized as a hide-out by armed gangs or absconders wanted for any offence.

To arrest any person, without a warrant, who has or against whom there is reasonable suspicion or is about to commit a cognizable offence. They may also use any force necessary to make such an arrest. However, such arrested person has to be handed over to the officer in charge of the nearest police station without any possible delay, along with the report of such arrest.[14]

To enter and conduct a search without a warrant on any premises for the purposes of making an arrest as aforesaid or recover any person or property who or which is under suspicion, or any unlawful arms, ammunition or explosive substances. They may also use any force necessary for the fulfilment of such purpose.

These powers can be exercised merely on the opinion and on the suspicion of such acting officer or forces.[15]

Further, it also empowers the governor of the States and the Administrators of the Union Territories or the Central Government to implement this Act on the parts or whole of the state or the Union Territory by declaring it as a "disturbed area", as per the provisions of S. 3 of the Act.[16] They may do so, if they are of the opinion that it is important and necessary to prevent terrorist activities or suppress such activities which may disrupt the sovereignty of India or cause insult to the Constitution of India or the Indian flag.

Over the decades, AFSPA has been amended and extended to various different areas and states on the order of the government, with its core provisions still the same.

Chapter III: Impact of Afspa in Different States: A Comparison

The Act is renowned as a "controversial Act" due to its inevitable provisions providing powers and privileges to the concerned authorities. The Armed Forces (Special Powers) Act of 1958 was enacted especially for the states of Nagaland and Assam. However, it was later extended to the states of Jammu and Kashmir in 1990 and to certain areas of Punjab and Chandigarh in 1983. The details of the implementation in different areas as discussed below in details.

i. Assam, Nagaland and Manipur: The Northeastern States

The Act of 1958 was a result of the Armed Forces (Special Powers) Act, 1948, which was on the basis of the Ordinance of 1942. It was enforced on September 11, 1958. It was initially enacted as the Armed Forces (Assam and Manipur) Special Powers Act, 1958, but later substituted as the Armed Forces (Special Powers) Act, 1958. It was enacted especially for the northeastern states, as patently understandable from its preamble, to suppress and control the Naga rebellions of the Naga Hills by the Naga National Council, who boycotted the first general elections of 1952. They were uncontrollable even by the Assam Rifles and the state armed police forces. Further, it was also implemented to suppress the insurgencies by the United Liberation Front of Assam (ULFA). As a result, AFSPA was also applied in some parts of Arunachal Pradesh, which boarded Assam, as it was also affected by the Naga insurgent activities. Thus, this Act proved to employ "special powers" on the armed forces, or the men in uniform, to take actions and measures to suppress these rebels in the disturbed areas.

However, there have been many protections and boycotts against the implementation of the Act since it has been claimed to be infringing human and civil rights by activists like Irom Sharmila from Manipur for over sixteen years.

Even Mizoram experienced insurgency in the 1960s, compelling the implementation of AFSPA, which was later withdrawn after the peace settlement in 1986. This made

Mizoram one of the few states in the northeast of India that have achieved the honor of withdrawing from the implementation of AFSPA without continued military oversight. Additionally, the Act was also implemented in Tripura due to the two separatist groups, the National Liberation Front of Tripura and the All-Tripura Tiger Force. However, it was later withdrawn from the implementation of AFSPA in 2015 after improving its security and reducing insurgency at a larger rate.

ii. Punjab and Chandigarh

The Armed Forces (Punjab and Chandigarh) Special Powers Act of 1983[17] was enacted by the Central government to empower armed forces to exercise their "special powers" in the disturbed areas of the state of Punjab and the union territory of Chandigarh. It was enforced on December 8, 1983.

The special powers as provided under this Act are the same as that of the AFSPA, except it has a provision for the power to stop, search, and seize any vehicle or vessel, which is suspected, on reasonable grounds to carry a proclaimed offender, or a non-cognizable offender or any other person against whom a reasonable suspicion exists for the same.[18]

It was implemented to address the situation of insurgency caused by the rise of Khalistans and militant activists. It was in June 1984 when the Prime Minister of India, Indira Gandhi, ordered an operation called Operation Blue Star to remove Sikh militant separatists, namely, Jarnail Singh Bhindranwale and others, from the Golden Temple because they allegedly wanted to create an independent Sikh state called that Khalistan in Punjab.

Further, two operations[19], known as Operation Black Thunder I (by National Security Guards, the 'Black Cat' commandos) and Operation Black Thunder II (by the Border Security Forces), took place in 1986 and 1988, respectively. These also relate to the attack on the Golden temple-based Sikh militants.

However, in 1997 the Act was revoked as the insurgency was significantly reduced in the state. This revocation displayed that the temporary implementation of this Act in disturbed areas could restore peace and tranquility again.

iii. Jammu and Kashmir

AFSPA in Jammu and Kashmir has a significant history since 1990 because of its long-standing insurgency and security issues in the state due to the reasons for the demand for independence and cross-border influences. This led to the need for strict and upright counter-insurgency measures, which resulted in the implementation of the AFSPA through The Armed Forces (Jammu and Kashmir) Special Powers Act of 1990[20].

The special powers as provided under this Act are the same as that of the AFSPA, except it has a provision for the power to stop, search, and seize any vehicle or vessel, which is suspected, on reasonable grounds to carry a proclaimed offender, or a non-cognizable offender or any other person against whom a reasonable suspicion exists for the same.[21]

Chapter 4: Analysis of Implementation

The implementation of AFSPA has its own pros and cons, like the two faces of a coin. The Act, even if in its different forms, has the same act to fulfill, that is, providing special powers and immunities to the men in uniform when they exercise their duty and authority in the disturbed areas. The Act allows these forces to take swift and decisive measures and actions against insurgents to suppress and reduce separatist movements, like in the areas of Punjab, Nagaland, Assam, and Arunachal Pradesh.

Nevertheless, unlike in Punjab, where AFSPA was eventually lifted, in Jammu & Kashmir and the Northeast, the Act has been maintained for extended periods. This comparison underscores the differences in political context, insurgency dynamics, and local opposition across states. It is because of the aid and support of the political parties of Punjab

who, in Punjab, took initiatives to reduce insurgency and restore peace and harmony.

However, its implementation has led to major human rights issues and concerns, which has fuelled opposition to the implementation of this Act due to extra-judicial killings, enforced disappearance and torture, cases of abuse of powers by an increase in the number of rapes, sexual violence and child killings, and also illegal arrests and detentions. The incident of the Malom Massacre, where on November 2, 2000, in a town of Manipur, Malom, ten civilians who were waiting at a bus stop were shot and killed, allegedly by the Assam Rifles. This inspired **Irom Sharmila**, "the Iron Lady of Manipur", or the "Mengoubi," to sit on a fast, which became the world longest duration fast for over sixteen years, until the decision of the Supreme Court in 2016[22] to end the immunity of the armed forces from the prosecution under AFSPA. Thus, activists, some political leaders, oppositions, local leaders, and journalists have continually opposed AFSPA, leading to massive protests, filings of cases with the courts, write-ups in journals and newspapers, and media attention.

Hence, public perceptions and views in these different states were largely negative, as civilians often felt targeted by security forces, leading to distrust of the authority or the government. The prolonged presence becomes a barrier to development and social stability due to the fears in the hearts of the civilians. There is a perception that the implementation of AFSPA in the northeastern states has a major role to play in its underdevelopment. The provisions of special powers provided under the Act has been termed and considered as a way of "getting away with murder"[23] on the part of the armed forces.

Further, after the recommendations and guidelines provided by the Supreme Court, many committees were set up for the same purpose, but no active results could be seen. In 2005, the **Justice Jeevan Reddy Committee**[24] recommended repealing AFSPA by withdrawing its implementation in the

Northeastern states and suggesting to incorporate the provisions of the Unlawful Activities (Prevention) Act, 1967 (UAPA)[25], instead. It was also stated it to be "too aggressive" and proposing alternative laws to address security concerns. It also suggested modifications to the UAPA, such as establishing a grievance cell and many others. However, not all recommendations were implemented and the effect of AFSPA still continues.

In June 2007, the Fifth Report on Public Order by the **Second Administrative Reforms Commission** (ARC)[26], was produced to recommend measures for the reforms in administrative nature in India by examining the internal security laws and reconsidering their relevance and aptness. The commission emphasied on the accountability factor of the authority in their operations and proposed measures to balance internal security with the human rights. The report suggested the repealing of AFSPA, as it was considered as outdated and inconsistent. It also suggested the authorities to be operated under the UAPA. However, the government did not adopt the recommendation of repealing the Act again.

In 2013, the **Justice Verman Committee**[27] was formed to address the issues of rape cases by providing recommendations for the amendment of the criminal laws. The Committee suggested that the Act of AFSPA needs to be revisited, as sexual violence by armed forces should not be exempted or provided immunity from prosecution under AFSPA. Although the recommendations resulted in some amendments to the then criminal laws, the ones of AFSPA and the immunity were not implemented.

In the same year, the Supreme Court appointed the **Santosh Hegde Commission,**[28] a Special Investigating Team, to investigate the alleged cases of extra-judicial killings in Manipur under the cover of AFSPA. It recommended the reviewing of the Act every six months to ensure and bring about necessary changes. It also suggested to amend UAPA so

that it can replace AFSPA. Yet, no government initiatives were taken to change or amend.

In 2019, the **United Nations Human Rights Committee Report**[29] suggested that the armed forces must not abuse their powers and privileges to infringe on human and civilian rights. Despite these recommendations increased international pressure on India, the government still maintains and provides AFSPA to be essential for national and internal security.

Thus, these committees and commissions have provided majorly for the repeal of AFSPA, yet the government is opinionated to retain AFSPA to its core essence.

Chapter 5: Conclusion and Recommendations

The validity of the Act was and has been questioned several times, but the Supreme Court, in the case of **Naga People's Movement of Human Rights v. Union of India**[30], upheld the constitutional validity, further stating that S. 4 and 5 of the Act are not arbitrary and unreasonable. However, the general rules and provisions stated in the criminal laws in force and the Constitution of India, like the production of the arrested person within twenty-four hours before the Magistrate and such, shall be abide by.

Further, the implementation of this Act has been recently extended for six months in Manipur[31] and Arunachal Pradesh[32] from April 2024. Additionally, amid the recent turmoil in Bangladesh, the Act has been extended for more six months from October 2024 in the disturbed areas of the state of Assam, like Dibrugarh, Charaideo, Tinsukia, and Sivasagar. Also, the exercise of S. 3 in six districts of Nagaland for six months from April 2024.[33]

India provides immunity to its armed forces under S. 6 of the Act, which has been in question for all, and the Supreme Court in 2016 an order to end it. As a result of this, the Bill of 2017 was introduced in the Lok Sabha on Aug 4, 2017.[34] Yet the torture and abuse of powers by such forces have not reduced.

"In its latest report "Crime in India - 2019", the National Crime Records Bureau (NCRB) recorded 85 deaths in police custody across the country in 2019. Out of these 85 deaths, 15 cases were registered against police personnel in 2019, of which only eight police personnel were arrested and four were chargesheeted but none were convicted at the year's end. Similarly, in cases of "torture/causing hurt/injury" category, in one case a police personnel was arrested but none were convicted during 2019"[35].

Further, *"The Union Territory of Jammu & Kashmir (J&K) continued to witness violence from the armed opposition groups. As per the Annual report 2017-2018 of the Ministry of Home Affairs, Government of India, "Since the advent of militancy in J&K (in 1990), 14024 Civilians and 5273 Security Force (SF) personnel have lost their lives (upto 31.03.2019)".419 The casualty of SF included the killing of at least 40 Central Reserve Police Force personnel after a suicide bomber belonging to Jaish-e-Muhammad, a Pakistan-based terrorist group, drove a vehicle carrying explosives into a CRPF convoy in Pulwama, J&K on 14 February 2019."*[36]

Recently, the Supreme Court on September 17, 2024[37], quashed FIRs of the criminal proceedings against the Indian Army who by mistake fired upon miners, confusing them with militants, killing around fifteen civilians and miners, on December 4, 2021. Such proceedings were set aside on the ground of lack of sanction from the central government to initiate a proceeding against such army officials.[38]

Thus, to ensure that the rights of the civilians are preserved and actually restore peace and tranquility in the disturbed areas, the government may refer to the following:

i. To decrease the "special power" provided under AFSPA.
ii. To decrease the immunity provided under AFSPA.
iii. To prescribe time limits for the acts of the government in relation to the armed officials as suggested under the 2017 Bill.

iv. To encourage written reasoning and sanctions under AFSPA, as suggested under the 2017 Bill.
v. To remove the prior sanctions for sexual offences and violence by armed officials, as suggested under the 2017 Bill.
vi. To make various amendments in the UAPA, to easily replace AFSPA.

To completely repeal AFSPA, as introduced by the Bill of 2018[39].

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"Safeguarding the Rights of Migrants in Indian Ocean Region"

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Abstract

Migration in the Indian Ocean Region (IOR) has occurred for centuries connecting the nations of East Africa, South Asia, and Southeast Asia. The people from this region have moved for a variety of reasons: in search of trade, better employment, escaping war, environmental cause, and many more. The paper analyses the historical and current factors of migration as well as some of the challenges faced by the migrants. Historically, such factors that impact migration had involved migrating through variety of approaches, particularly around the Indian Ocean where maritime routes played an important role in trade and exploration. Other prominent migration routes involved flows of people from the Africa peninsula and Indian and Southeast Asian destinations, facilitating the exchange of goods and ideas. During the colonial era, large numbers of laborers, mostly from India were transferred to destination such as East Africa and Mauritius. The migrations have changes the cultural and social features of the destination irrevocably. In the current world economic factors have become the primary push force factors of migration. So many people from South Asia and East Africa are emigrating to Middle East nations, especially Saudi Arabia, the United Arab Emirates, and Oman, because labor in the construction and domestic work sectors among others is in high demand. Many of these migrant workers send remittances back to their home countries, providing essential financial support for numerous families. Remittances also play an important role in strengthening the economic stability of the regions they originally come from. Climate change is another key driver of an increase in migration. For instance, a small

island nation in the Indian Ocean called the Maldives is threatened by sea levels rising. When their lands get submerged beneath water, people move out and seek safer places to live. The kind of migration that is driven by threats posed by the environment is becoming increasingly common. Political instability and conflict remain one of the major reasons for forced migration in the Indian Ocean Region (IOR). There have been wars and violence in Yemen, Somalia, and Sri Lanka, among other countries, and many people have been forced to leave their homes and seek refuge elsewhere. Most such journeys are dangerous and risk-prone. For most of these migrants, conditions are challenging, and working in the Gulf countries subject them to more harsh conditions. Many are exploited because of their labor, exposed to poor conditions, and even abused by their employers due to strict labor systems that leave them with minimal freedom.

Keywords - merchants , migration , remittances , maritime.

Statement of Problem

Migration in the IOR has been in practice for centuries, bridging East Africa, South Asia, and Southeast Asia for a long time due to various reasons, among them economic, environmental, and political factors. Opportunities that unfold from migration are diverse; however, the experience of most migrants in host countries is one of exploitation, harsh working conditions, legal barriers and social discrimination. In addition, climate change and political instability have intensified forced migrations. This paper aims at bringing forth the importance of better knowledge about these migration causes and the significant barriers migrants face.

Objective

The main objective of this research paper is to analyze the historical and contemporary drivers of migration in the IOR and trace the socio-economic, environmental and political factors that shape flows of migration across East Africa, South Asia, and Southeast Asia.

Research Question

1 Are existing laws in the Indian Ocean Region sufficient to protect the rights and interests of migrants?
2 What are the historical and contemporary causes of migration in the Indian Ocean Region and what roles do economic, environmental and political factors play in determining experiences and challenges for migrants in this region?

Methodology

This research adopts the doctrinal research method by considering the existing legal frameworks, treaties, scholarly works, and case laws that illuminate the interfaces between migration, geopolitics, and socio-economic factors in the Indian Ocean Region.

Introduction

The movement or migration occurred for centuries in the Indian Ocean Region (IOR), linking the societies of East Africa, South Asia, and Southeast Asia. People of this region have migrated for various reasons to create a variety of causes for business, better work, war, environmental concerns, and many other factors. Therefore, in this paper, the most salient reasons why people migrate past and present will be explained along with the challenges that migrants face. Migration has long played a central role in promoting cultural exchange. One of the oldest and most important trade routes, the Indian Ocean connected merchants and explorers across their lands. Many African migrants ended up in the Arabian Peninsula, India, and Southeast Asia, opening up opportunities for exchanges of commodities and ideas that would prove so important to each of these areas of the world. Laborers from India were brought in large numbers during the colonial era to East Africa and Mauritius to serve as labor. Their migration is not only an economic phenomenon but has also significantly shaped the culture and social structure of the communities to which they moved and settled.

Historical Context of Migration

The history of migration[1] within the Indian Ocean Region is centuries old and very significantly molded by factors such as trade, colonialism, and even the dynamism of sociopolitics. This context provides a basis for grasping the profiles that define the present-day dynamics of migration within this region. In the Indian Ocean, the linking of East Africa to the Arabian Peninsula across South and Southeast Asia has been an important tradeline for several thousands of years. Maritime trade was already in full swing from the first century CE; merchants moved through these waters to trade goods such as spices, textiles, and precious metals. Ports such as Zanzibar, Mombasa, and Calicut thrived as busy centers of commerce, facilitating not just the movement of goods but also of people. Even in the wake of decolonization movements[2], the waves of migration did not stop. Most newly independent countries had weak and struggling economies, and it therefore began experiencing massive emigration, sought better situations abroad. Migrant labor flocked to the Gulf States; more so men from South Asia and East Africa since they registered the potential for rapid economic growth with a critical shortage of labor.

Contemporary Causes of Migration

The migration of labor across the Indian Ocean Region has developed its causes since modern times, although the most important cause of such migration is the economic factor. Many people, specifically from East Africa and South Asia, migrate to the Gulf States of Saudi Arabia, UAE, and Oman in order to get better employment prospects and higher salaries. Poverty, unemployment, and lack of access to medical care and education force people to travel in search of employment. Thus, one of the main reasons for the attraction to the Gulf States involves the construction of infrastructure and massive hospitality and domestic service sectors-again, very large for construction and oil refineries-but jobs are often demanding: long hours, poor labor conditions, and insecurity of

employment. A notable aspect of this migration is the flow of remittances returned to the migrants' home countries. These remittances play a crucial role in the economies of many IOR nations, as it supports families with educational fees, local investments, and building up of economic resilience in communities. In countries such as Bangladesh, Nepal, and many East African states, remittances are an important component of national income, contributing to higher standards of living and poverty reduction. However, dependence on remittances also has its disadvantages. Economic downturns in destination countries or changes in migration patterns can be detrimental. Furthermore, the impact of remittances also tends to increase social and economic inequalities. Environmental factors are also emerging as significant drivers of migration in the IOR, adding another layer to the region's dynamics for migration.

Climate change and rising sea levels are threatening livelihoods; many communities have to find alternative places to live in order to ensure safer conditions. New difficulties now enter into migration in the region, with people not moving only for economic reasons but also in order to avoid environmental risks.The side effects of changing climatic conditions are growing severe, with flooding, droughts, and storms appearing unpredictable. Low-lying coastal regions, especially in small island nations, are highly exposed to flood risks, which compromise both livelihoods and survival. Melting of polar ice as a result of increased global temperatures continues to raise sea levels, which flood most coastal regions. When these regions can no longer provide habitable living conditions and agricultural land is lost, it forces people to move away. Climate change impacts are already visible across the Indian Ocean Region. Coastal erosion, saline intrusion, and habitat degradation are taking on widespread forms. Most vulnerable to these changes are farmers and fishermen who earn from natural resources; their vulnerability increases with the changes. Community responses to these changes are much

needed as well as of urgent importance, as such impacts have become overwhelming for the people.

Political Instability and Conflict

Political instability and war are several of the significant reasons for migration in the Indian Ocean Region, compelling people to abandon their homes in search of safety. Ongoing wars and violence in Yemen, Somalia, and Sri Lanka have led to serious humanitarian crises, with many displaced within their countries or across borders into neighboring nations or far-flung regions.

Their journey, for example, is fraught with danger and uncertainty, without many legal protections and access to even the most rudimentary services in host countries. The risk of exploitation and abuse is extremely high, particularly for women and children, who together are a majority of the victims. These challenges particularly highlight the fragility of those fleeing conflict and the need for urgent protection and support in such circumstances. The civil war in Yemen, which started in 2015[3], has made it one of the worst humanitarian crises in the world. Different factions have been involved in the conflict, leading to widespread violence, destruction, and severe food shortages. In this context, several people in Yemen have been displaced and are seeking refuge either within the country or in other countries like Saudi Arabia and Oman. Similarly, political instability has resulted in significant migrations in Somalia as people seek refuge from security brutality, instability, and poor livelihood. Since the early 1990s, Somalia has been long-engulfed in violence, such as civil wars, clan-based violence, and the rise of extremist groups like Al-Shabaab. Such protracted conflicts displace up to 2 million Somalis internally, while others seek asylum in other neighboring states like Kenya and Ethiopia. Somalia exemplifies how protracted insecurity can catalyze severe levels of internal and cross-border migrations.

Challenges Faced by Migrants

Those migrants in the Indian Ocean Region (IOR) face many challenges that have a direct impact on their lives and welfare. One of the gravest issues is labor exploitation. Most migrant workers see the Gulf countries as a promising destination however, they are often subjected to working under serious conditions with low wages, long hours, and meager job security. In some cases, their workplaces lack protection or freedom, which makes them exposed. Widespread grievances include a basic omission of timely wage payment and hazardous working conditions. Domestic workers, for one, often face systemic inequalities and maltreatment at the workplace. Beyond these adversities, legal restrictions perpetuate their plight and stable employment and access to basic services become a dream rather than reality for many.

Policy Implications

Internationally human rights, humanitarian and maritime laws have been the only fundamental area to guarantee the protection of migrants and refugees moving perilously by sea. Internationally established instruments become the important safeguards for those risking their lives on unsafe routes. One of the main principles declared by the 1951 Refugee Convention and its 1967 Protocol is non-refoulement, which bars states from a return of refugees to countries in whose territories their lives, or their notions of existence, or freedom might be threatened. Apart from these, international human rights instruments, such as the Universal Declaration of Human Rights[4] and the International Covenant on Civil and Political Rights, assert basic rights such as a right to life, security, and liberty from arbitrary detention. These provisions are to be applied universally, non-discriminatively by reason of race, religion, political opinions, national or social origin, or nationality, national or ethnic origin, or any other status, and all are accorded equal respect and dignity. For instance, there are some specific maritime laws such as the International Convention for the Safety of Life at Sea, 1974 (SOLAS), and

The United Nations Convention on the Law of the Sea (UNCLOS), which require the shipmasters to render assistance to people in distress at sea, exhibiting a sense of humanitarian responsibility that is generally beyond national borders. In addition, the framework of Refugee and Migrant Protection of the UNHCR postulates to provide comprehensive support and solutions for migrants, refugees, and displaced persons. In doing so, this framework helps confer necessary protection, support, and opportunities on people fleeing from conflict or persecution or violence. It also furthers safe, orderly, and regular migration pathways that eliminate dangerous irregular migration.

The International Maritime Organization contributes to protecting migrants on the sea through enhanced maritime safety. The IMO enhances the standards of safety for ships and ensures the provision of rescue operations to the distressed migrants at sea. Regional cooperation also provides an essential element in solving the plight of irregular migrants. Countries and international organizations establish cooperative policies and agreements to work for better border management, provide humanitarian aid, and protection measures between countries. Such agreements among nations also motivate states to build policies that reduce push factors of migration, such as conflicts, environmental disasters, and poverty conditions. Humanitarian organizations like the International Organization for Migration (IOM) and the Red Cross also play important roles in migrant livelihoods. They provide emergency assistance such as food, shelter, and medical care as well as long-term interventions through resettlement and integration programs for displaced populations. These efforts will be key to enhancing the well-being of migrants, ensuring their safety, and preventing exploitation throughout their journey. In November 2022, this committee passed a resolution that recognized government involvement in the rescue of migrants at sea. The resolutions pointed out that in humanitarian situations, the states are responsible and have the obligation of

providing essential help to migrants. More importantly, the UNCLOS[5] complements efforts by providing articles that oblige states to give assistance to vessels in distress and prohibition on trafficking in persons. However, some critics argue that UNCLOS alone would not be able to solve complex issues of migration through the ocean, which requires more all-encompassing frameworks and strategies.

Geopolitical Implications of Migration: The Sri Lanka-China Port Dispute

The case of the Sri Lanka-China port dispute is particularly emblematic of the Indian Ocean Region in the complex interplay between the geopolitical dynamics and migration. Hambantota Port, highly funded through Chinese investment, becomes the point of contention as concerns are raised regarding national sovereignty and debt dependence. After the port did not raise the expected revenues, the government was left with no option but lease it to a Chinese company for 99 years in 2017. Regional powers, especially India, reacted with anxiety as this was perceived as an alarming trend: expanding Chinese hegemony makes a mockery of Indian maritime security. In this geopolitical environment, it becomes clear how such developments can push the causes of migration. Issues such as loss of critical infrastructure through foreign investment and changes in governance influenced by other powers create social and economic instability that, in turn, pushes the local population to migrate following such economic downturns and uncertainties. The Hambantota Port is an example of a broader problem - international investment posing a threat to local stability. For Sri Lanka, it signifies the challenges foreign influence presents, especially from China, and the effects on national sovereignty. It also shows the socio-economic characteristics associated with migration patterns in the region.

Conclusion

Thus, there is a sense of multifacetedness to the nature of migration in the Indian Ocean Region (IOR). The region's

history and contemporary challenges have significantly influenced migration trends in this area. The issues that arise with their rights and welfare increase when individuals cross the border. The old timeline for migration in this region has set it up for what is being seen in its contemporary trends, based on economic factors, environmental reasons, and even political instability as the causes of displacement. However, these immigrants face challenges waiting in the future. Anti-immigrant sentiments and xenophobia have once again invaded the throes of countries, majorly threatening social cohesion among those countries. Economic downturns and political instability usually spur up the anti-migrant discrimination. Such challenges have to be worked upon with proactive measures in form of public sensitization campaigns that stir up inclusion as well as understanding. The COVID-19 pandemic has only been deepening the vulnerabilities inherent within migration systems. Future public health crises may even interrupt migration patterns and increase risks for the migrant communities involved.

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Impact of Odr on Access to Justice in India

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Abstract

The growth of Online Dispute Resolution (ODR) within the framework of Alternative Dispute Resolution (ADR) mechanisms signifies a transformative shift in dispute management, particularly in India. ODR utilizes technology to facilitate efficient, cost-effective, and accessible resolution processes, effectively addressing the backlog as seen in traditional court systems. As highlighted by NITI Aayog, Nowadays ODR is becoming the preferred method for resolving low-value, high-volume disputes, such as those arising from e-commerce transactions . The integration of ODR into the ADR ecosystem is supported by a robust legislative framework, including the Arbitration and Conciliation Act and the Information Technology Act, which provide essential legal backing for electronic records and online arbitration[1]. The COVID-19 pandemic has further accelerated the adoption of ODR, as stakeholders recognize its capability to deliver timely resolutions while minimizing physical interactions. The flexibility of ODR allows for asynchronous communication and customizable processes, making it particularly suitable for cross-border disputes[2] .Despite its promising trajectory, challenges such as digital literacy and inadequate infrastructure remain significant barriers to widespread adoption. However, strategic initiatives aimed at enhancing ADR practices and mainstreaming ODR can help overcome these obstacles[3]. In conclusion, as India continues to embrace technological advancements in dispute resolution, ODR is well-positioned to enhance access to justice and improve overall outcomes in dispute management. This

paper explores these dynamics, emphasizing ODR's critical role in transforming the dispute resolution landscape through innovative technology-driven solutions[4].

Keywords: Online Dispute Resolution, Alternative Dispute Resolution, technology, legislative framework, access to justice, digital literacy.

Statement of the Problem

The rapid growth of Online Dispute Resolution (ODR) within the framework of Alternative Dispute Resolution (ADR) mechanisms has transformed tremendously and provides a transformative opportunity to enhance dispute management in India. However, despite its potential to address significant challenges within the traditional court system,there are still several critical barriers that hinder the adoption and effectiveness of ODR.

1. ODR offers a more efficient and cost-effective means of resolving disputes, particularly low-value, high-volume cases such as those arising from e-commerce transactions; there still remains a lack of awareness and understanding among potential users. Many individuals and businesses are unfamiliar with ODR processes, which limits their willingness to engage with these platforms for dispute resolution.
2. Digital literacy still is a significant challenge. A substantial portion of the population, especially in rural areas, lacks the necessary skills to navigate digital tools effectively. This digital literacy divides people and creates inequalities in access to justice, preventing marginalized groups from benefiting from ODR solutions.
3. Although the legislative framework supporting ODR—such as the Arbitration and Conciliation Act and the Information Technology Act—provides essential legal backing for electronic records and online arbitration, ambiguities regarding enforceability and jurisdictional issues remain. These legal uncertainties deter parties from opting for ODR over traditional litigation.

Furthermore, infrastructure challenges, including unreliable internet connectivity and inadequate technological resources in certain regions, hinder the effective implementation of ODR solutions. The COVID-19 pandemic has accelerated the adoption of ODR; however, it has also highlighted these systemic issues that must be addressed., the problem lies in the interplay between awareness, digital literacy, legal frameworks, and infrastructure challenges that collectively limit the potential of ODR as an effective alternative dispute resolution mechanism in India. Addressing these issues is essential for harnessing the full capabilities of ODR and improving access to justice for all stakeholders.

Research objectives and methodology

1 To Evaluate the Impact of ODR on Access to Justice: Assess how Online Dispute Resolution (ODR) mechanisms enhance access to justice for various demographic groups, particularly marginalized communities in India.

2 To Analyze the Legislative Framework Supporting ODR: Examine the effectiveness of existing legal frameworks, such as the Arbitration and Conciliation Act and the Information Technology Act, in facilitating ODR processes and addressing potential legal ambiguities.

3 To Identify Barriers to ODR Adoption: Investigate the key challenges hindering the widespread adoption of ODR, including issues related to digital literacy, infrastructure, and public awareness.

4 To Explore User Experience with ODR Platforms: Gather insights on user satisfaction and experience with various ODR platforms, focusing on usability, accessibility, and outcomes for disputants.

5 To Propose Recommendations for Enhancing ODR Implementation: Develop strategic recommendations aimed at overcoming identified barriers to ODR adoption and improving its effectiveness as a dispute resolution mechanism in India.

Research Methodology

The research will utilize a mixed-methods design, combining doctrinal analysis with literature review to achieve a holistic understanding of ODR in the Indian context. The doctrinal approach focuses on examining existing legal frameworks, statutes, and case law relevant to ODR. and literature reviews of academic articles, legal commentaries, and government reports that discuss ODR's evolution, its legislative support, and its implications for access to justice.

Introduction

Online Dispute Resolution (ODR) refers to the use of digital technology to facilitate the resolution of disputes through methods such as negotiation, mediation, and arbitration conducted online. In India, ODR has emerged as a vital mechanism for addressing the increasing volume of disputes arising from e-commerce and digital transactions. Its evolution reflects a historical trajectory influenced by traditional dispute resolution practices, legislative developments, and technological advancements.

Historical Context

The roots of dispute resolution in India can be traced back to ancient times, where mechanisms akin to arbitration and mediation were practiced. The Brihadaranyaka Upanishad, one of the oldest texts in Indian philosophy, which mentions various forms of arbitral bodies known as Panchayats, which were responsible for resolving conflicts related to contracts, marriage and criminal matters. These bodies operated with legally binding authority over the parties involved in disputes[5]. Then with the advent of Muslim rule in India, Islamic legal principles were integrated into the local culture of the country, introducing terms like Tahkeem (arbitration) and Hakam (arbitrator) into the dispute resolution lexicon. Then the British colonial period further formalized arbitration practices through legislation such as the Bengal Resolution Act of 1772 and 1781, which mandated that disputes be submitted to arbitration with binding outcomes[6].

Legislative Developments

The modern framework for ODR began to take shape with the enactment of various laws which aimed at streamlining arbitration processes such as. The Indian Arbitration Act of 1899. Which was influenced by British law and defined "submission" as an agreement to resolve present and future disputes through arbitration. This was followed by the Arbitration (Protocol and Convention) Act of 1937, which implemented international arbitration standards[7]. The Arbitration and Conciliation Act of 1996 marked a significant turning point in India's approach to dispute resolution. This Act established a comprehensive legal framework for both domestic and international arbitration, emphasizing cost-effectiveness and efficiency in resolving disputes. The Act has undergone changes in 2015 and 2019 to address emerging challenges and enhance its effectiveness.

Emergence of ODR

The concept of Online Dispute Resolution (ODR) has gained significant traction in India, particularly following various initiatives aimed at leveraging technology for effective dispute resolution.

Early Initiatives: In 2006, the National Internet Exchange of India adopted the Domain Name Dispute Resolution Policy (INDRP), which established a framework for resolving disputes related to online domain names. This policy represented an early effort to address online conflicts and laid the groundwork for more sophisticated ODR systems that would emerge later[8]. If we see the Impact of COVID-19 pandemic catalyzed a substantial push towards adopting ODR as courts transitioned to online platforms for hearings and case management. The pandemic highlighted the inefficiencies and backlog in the traditional judicial system, with over 4.7 crore pending cases reported across various levels of the judiciary as of May 2022[9]. The urgency for innovative solutions became apparent, as social distancing measures restricted physical court proceedings[10]. Government Initiatives were taken in

response to these challenges, the Ministry of Law and Justice urged government agencies to resolve disputes through online means. This led to the launch of initiatives such as the SAMADHAAN portal, which specifically addresses payment-related disputes involving micro and small enterprises[11]. The SAMADHAAN portal exemplifies how ODR can streamline conflict resolution processes, particularly for low-value disputes that are often burdensome for traditional courts.On the other hand ODR offers numerous benefits, including cost-effectiveness, accessibility, and speed in resolving disputes. It allows parties to engage in mediation or arbitration without being physically present in the same location, which is especially advantageous in a country like India where geographical barriers can impede access to justice[12]. Furthermore, ODR can help maintain business relationships by providing a less adversarial environment compared to traditional litigation[13].As ODR continues to evolve, its integration into India's dispute resolution ecosystem is expected to grow. The government has recognized the importance of technology in modernizing legal processes and is likely to invest further in developing robust ODR frameworks that can handle diverse types of disputes effectively[14]

Current Landscape

Today, India is witnessing a burgeoning ecosystem for ODR, supported by various stakeholders including startups, legal practitioners, and government bodies. Organizations like Agami have played a crucial role in nurturing this ecosystem by promoting awareness and facilitating collaborations among industry leaders[15]. Furthermore, NITI Aayog's efforts to develop an ODR policy reflect a commitment to integrating these mechanisms into India's broader legal framework[16]. As ODR continues to evolve, its potential to enhance access to justice is becoming increasingly recognized. By offering a cost-effective alternative to traditional litigation processes,

ODR can significantly reduce the burden on courts while providing timely resolutions for low-value disputes.

Suggestions and conclusion

Increase Access to Digital Infrastructure -

- Increase physical access to infrastructure: Expand the availability of basic digital infrastructure, particularly in rural and underserved areas, to ensure that all individuals can access ODR services effectively by Implement programs aimed at enhancing digital literacy among diverse demographics, focusing on equipping users with the skills necessary to navigate ODR platforms.
- Reduce digital divide through targeted policies, Develop and enforce policies that specifically target the digital divide, ensuring equitable access to technology for marginalized communities.[17]

Increase Capacity

- To Establish comprehensive training programs for legal professionals and users alike to enhance understanding and effective use of ODR.
- Enhance the capacity of paralegal services to provide support and guidance in utilizing ODR mechanisms effectively.[18]
- Promote private sector involvement in ODR development to foster competition and innovation in service delivery.[19]

Build Trust in ODR

- Encourage the use of ODR in government-related disputes to set a precedent and build trust among citizens regarding its effectiveness.
- Launch campaigns aimed at educating the public about the benefits and processes of ODR, increasing overall awareness and trust.
- Provide incentives for stakeholders, including legal practitioners and businesses, to adopt and promote ODR solutions.[19]

Suitably Regulate ODR

- Review and amend existing laws to provide clearer guidelines on the use of ODR, addressing any ambiguities that may hinder its adoption.
- Develop guiding principles for ODR practices that ensure fairness, transparency, and accountability in the resolution process.[20]

Conclusions

Online Dispute Resolution (ODR) signifies a transformative shift in dispute management in India, particularly for low-value, high-volume disputes such as e-commerce transactions. ODR enhances efficiency, accessibility, and cost-effectiveness while addressing the backlog in traditional court however The legal framework, including the Arbitration and Conciliation Act and the Information Technology Act, supports ODR by providing essential backing for electronic records and online arbitration. However, ambiguities regarding enforceability and jurisdiction remain, which can deter users from choosing ODR over traditional litigation there have been Significant barriers to ODR adoption include low digital literacy, inadequate infrastructure, and a lack of awareness among potential users. These challenges disproportionately affect marginalized communities, limiting their access to justice through ODR mechanisms and The COVID-19 pandemic has accelerated the adoption of ODR by highlighting inefficiencies in traditional judicial processes and necessitating remote solutions. Government initiatives during this period have further promoted ODR as a viable alternative for dispute resolution on the other hand as India embraces technological advancements in legal processes, ODR is positioned to enhance access to justice and improve outcomes in dispute management. Its evolution is supported by various stakeholders and government policies aimed at integrating ODR into the broader legal framework.

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Copyright in the Digital Age: Balancing Innovation and Protection

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Abstract

The digital revolution has also affected the regulation of copyright laws and it poses different issues depending on whether one is a creator, consumer or a regulator[1]. The research paper discusses the copyright issues in the digital age with a particular emphasis on the challenges of protecting original works, combating piracy and defining copyright in an age of globalization. As more global media using social networks and other technologies such as blockchain technology are explored, the paper examines the challenges in protecting copyright in the era of technological convergence. Similarly, this paper explores current copyright overhauls and presents many approaches to achieving a better balance between the interests of both copyright owners and users. In the end, this paper seeks to explain the actors that encourage creativity and development in the social world while respecting the rights of the original producers in the age of the net.

Keywords: Copyright; Digital Age; Intellectual Property; New Media; Piracy; Blockchain Technology; Protection of Copyright; Copyright Law, Advancement, and Growth of Knowledge Society.

Statement of Problem

The digital evolution has revolutionized copyright law. This also impairs the existing structures that protect intellectual properties from developing new technologies and global access to creative content. The ability and speed at which consumers can share content over digital platforms give rise to concerns over copyright infringement and, more so, enforcement of jurisdiction. As more consumers become literate, they also

tend to expect that information will be available for free or cheaply.[2] This paper addresses the need for a balanced approach that adapts copyright to the digital age by exploring existing legal frameworks and emerging technologies like blockchain, digital media and social networks. The research seeks to find workable solutions to reconcile the rights of creators with the need for public access. The aim is to put forward a new form of copyright protection that guards courtesies of creativity but encourages inventiveness and access, thereby creating a better copyright regime in the global village.

Objective

This research paper explores the evolving landscape of copyright law in the context of rapid technological advancements in the digital era. As digital platforms and technologies transform how creative works are produced, distributed, and consumed, the traditional copyright framework faces new challenges and opportunities. This research paper seeks to address the implications of digitalization on copyright law, assess the extent to which existing copyright laws protect the rights of creators, and propose reforms necessary to balance the competing interests of copyright owners, consumers and technological advancements.

Research Methodology

In order to meet the aim of this paper, a doctrinal research methodology will be applied. This approach is apt for the examination of the current laws and regulations on copyright in the age of technology. The doctrinal method also provides room for an adequate study of the existing laws, and practices and their significance in the digital era.

Research Question

How can copyright law be adapted to effectively protect creators' rights while balancing public access and fostering innovation in the rapidly evolving digital era?

Introduction

Copyright law is a system of laws designed to ensure the rights of creators from infringement of their works. It can be safely assumed that its structures were first established with the enactment of the Statute of Anne, 1710, which provided for the first time an exclusive right of authors over their works and marked the transition from publisher to author rights.[3] The change was, in fact, an acknowledgement of the value of intellectual and creative efforts, which fueled the demand for books and literacy at the time of the Enlightenment. In the course of centuries, with time, copyright law is bound to further changes' because of innovations developed in the society, the conduct of the society itself and the creativity within the world. Specific examples include the Berne Convention or the TRIPS Agreement whose nature is to make copyright protection enforceable in many countries of the world.[4]

The traditional copyright framework is centered around a set of exclusive rights granted to creators. Such rights often comprise the right to reproduce, distribute, adapt, and publicly perform a work.[5] The system has worked quite well in motivating writers to write and publish works within the confines of the analog era. However, the digital technologies revolutionized the conditions and established new problems. Most of the earlier systems were applied in an age when there were hard copies available and the distribution was generally controlled, making the enforcement of such rights easier. Also, the laws did not effectively address the growing rate of creativity and the infringement of such creativity in the cyberspace.

In the pre-digital era, the concept of copyright contributed significantly to the promotion of creativity and economic development. It gave a chance to authors, painters, and even musicians, to invest in their work and compensate themselves later.[6] Due to the copyright, it became possible to exploit economic value from creative works. Copyright was

provided for the artistic creation and exploitation and provided economic incentives for the creators. Forms like registration and licensing agreements fixed ownership and usage of creative works thereby creating numerous creative industries - from book publishing to music.

Impact of Digital Technologies on Copyright Protection

The digital revolution fundamentally transformed how content is created, shared, and consumed. The advent of the web and the digitalization of platforms has made all kinds of information available to everyone, making it easy to create and share any work of art.[7] While this has benefited many independent creators, it has also led to rampant unconsented copying and sharing which makes it difficult to uphold any kind of copyright laws.

The globalization of content through the internet has given rise to significant challenges related to copyright infringement and piracy. The number of websites enabling illegal distribution of digital material has increased, making copyright holders to devote considerable resources to enforcement activities. The problem is not just the monitoring of infringement but also the effective action within each of the different legal systems.

The internet's global reach presents inbuilt challenges with jurisdiction. Creative materials that are produced in one part of the world can easily be reproduced and disseminated worldwide, making it impossible to know which law applies or how to enforce it in the relevant regions. This situation creates difficulties and problems in enforcement mechanisms that lead to the creation of loopholes which violate the rights of creators without proper remedy.[8]

Times have changed, and so have consumers' attitudes toward electronic content access; they want to pay little or nothing. This way of thinking is a threat to old-fashioned businesses that relied on the payment of dues or licenses. Already, forces are at play prompting artists and firms to find

alternative business patterns as advertisement and subscription systems grow.

The quick development of Blockchain technology appears to be a solution, more so to some copyright related issues. The use of blockchain, being a distributed and unchangeable record, ensures that there is real-time documentation of all ownership and licensing agreements. Such transparency would simplify the processes involved in managing rights and lowering conflicts and may fundamentally change how authors control and earn profits from their creations.

Digital Rights Management (DRM) Systems

Digital Rights Management (DRM) systems continue to evolve as tools for copyright enforcement in the digital age.[9] Such technological solutions have the potential to limit the interaction of the consumer with the digital content, for example, by restricting the reproduction and distribution or alteration of the works. Even though, in principle, DRM is designed for the benefit of the creative artists, such systems have been subjected to criticism due to the excessive and unnecessary restriction on the use of works in a manner that compromises access and fair utilization of the works.

The growing prominence of AI tools, particularly those for content creation, presents intricate questions regarding authorship and ownership. As AI technologies generate new content, establishing the copyright holder–the programmer, the operator, or even the machine–is becoming much more difficult.[10] Copyright law as it is conceived in the present must change to provide that the development of new technologies will not hamper the creation of rules that govern works created with the assistance of AI and similar devices.

Balancing Copyright Protection with Public Access and Innovation

One of the most complex and contemporary issues in copyright law is how to regulate information such that the rights of the copyright holder are protected while the public

has easy access to the information.[11] Extreme perspectives on these two opposing views can stifle the growth of knowledge and creativity where the former threatens to put every imaginable piece of work in a box while the latter is too relaxed to protect works and their creators. Striking this balance is critical in building a robust creative culture.

Over the past few decades, great innovations in the copyright law have been introduced including unique licensing models, fair use and limitations that seek to balance content access with protection of creators' rights.[12] Licensing models such as Creative Commons that encourage such initiatives, promote a sharing culture that provides flexible alternatives for the use of co. works.

In the present era of digital copyright, allowing voluntary licensing and creating synergies through organizations like collective societies, improves the way copyright is managed. This way of copyright management is efficient in dealing with multiple works because it allows the author to patent their own work with the terms that best fit the author in question. Adaptive behaviour, amongst those concerned, is needed to adjust to changes that take places that favour both the creator and the public.

Potential Legal Reforms to Adapt Copyright Law to the Digital Era

It is no secret that the emergence of the digital era has brought new sets of challenges to existing copyright laws which were developed long before the digital age. Such challenges include the ready availability of digital replicas, the risk of proliferation without permission, and the likely impossibility of policing these infringements in an internet which has become more and more global. Therefore, it becomes imperative that certain legal reforms be undertaken in order to review the scope of copyright laws in relation to the advancements brought about by technology.[13]

A reform that has been suggested is the application of flexible tiered copyright periods of protection depending on the

type of the work and the purpose of use. For example; in the case of digital materials, which are designed for easy manipulation and sharing, a moderate duration of copyright would be preferred as compared to that of copyright in traditional forms of media. This will spur the speed in which such works are made available to the public while at the same time including some period of protection for the authors.

An alternate approach taken into account includes the improvement of digital rights management (DRM) systems.[14] Enhancing the design and deployment of complex DRM solutions enables authors to exert greater control over their creations, thereby reducing unauthorized use while supporting distribution channels that are legal.

Moreover, revising the Safe harbor legislation, which shields most online services from liability for content created or uploaded by other users, could help achieve the goal of protecting innovation and copyright at the same time. As platforms would be encouraged to actively combat the distribution of unauthorized content, this would entail more stringent conditions for adherence to copyright infringement takedown notices.

Recommendations for Balancing Copyright Protection with Innovation

It is necessary to adopt a more dynamic and complex approach to the issues of copyright policies, in order to achieve an equitable middle ground between the two extremes.[15] The first steps in that direction could be in terms of organizing training programs on copyright 'dos' and 'don'ts' for the creators and the consumers alike. Such training helps in understanding the law, which makes them respect it, inspires them to create more, and influences new ways of using copyrighted work.[16]

Besides, providing a broad interpretation of 'fair use' within the digital environment can promote creativity without necessarily violating the rights of copyright owners.[17] Modified provisions for fair use might also permit

transformative uses of digital products including remixing, repurposing for research or educational content or organizing content into a database.[18] This would ensure that innovation occurs without stepping on the toes of the creators' rights.

Moreover, tax relief or awards to individuals whose copyright works are released to public domain may further facilitate greater availability of content without expanding or undermining the revenue of the authors. This way, copyright passages may get better without risking the health of the digital space.

Policy Suggestions and the Role of International Cooperation in Tackling Cross-Border Infringement

Due to the fact that the internet does not have boundaries, copyright law has to entail a lot of collaboration among countries. There is a need for international discussions on policies that will assist in standardizing copyright laws, hence making it easy to enforce the laws, especially with regard to digital content that is complex in its laws.

Creating a comprehensive international agreement exclusively focusing on electronic copyright enforcement may enhance inter-country relations in regard to enforcement and management of copyright.[19] This approach would serve both in combating piracy and the management of e-licensing practices in such a manner that they work closely together.

In addition, this could facilitate the establishment of joint mechanisms for surveillance and alerting concerning the violations of copyright by the relevant parties, the government, the IT companies and the cultural institutions.[20] Breaking the silos and promoting interaction among the relevant stakeholders will foster an atmosphere that finds ways of enhancing copyright protection while at the same time not hampering creative activities and content utilization.

Conclusion

The critique of the existing and proposed changes to the copyright laws shows that the present laws require modification to tackle the issues of the current digital age.

There is a call for legal changes to be more adaptable by considering the changing lengths of time of copyright and implementing better Digital Rights Management. Moreover, the digital economy can flourish only in circumstances where there is a carefully guarded intersection between the interests of the copyright owners and the innovative input of the general public.

Reorienting the current copyright regime does not only mean enacting new laws, but it also means understanding that the digital world is in a climate that does not associate itself with age-old definitions of authorship and ownership.[21] Education, expansion of fair use, and sharing of works disincentives can help create a balance between the two – the downloader and the creator of the works.

Most importantly, it has to be born in mind that copyright is always infringed upon, that there exists the need for these nations to be in the same plane on taking policy stances towards addressing this challenge. This is important in creating an enabling environment for digital copyright development in the future, where all persons will enjoy the creativity that will be on the internet, including the content creators themselves. As technology advances, it becomes evident that there will constantly be the need for reform and conversation in order to preserve the interests of all participants in the digital copyright arena.

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Capital Punishment: A Comparative Study Between India and Bangladesh

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Abstract

Death Penalty is the most serious punishment one can get for a criminal offence. It is a heavily debated topic in the philosophical and legal arenas. The major question that plagues the debate for retentionist countries is how should judges should decide between life imprisonment and death penalty. This paper focuses on understanding the factors which influence the imposition of the death penalty in the South Asian countries of Bangladesh and India which impose the death penalty carefully and sparingly. The sentencing of convicts and the oscillation between the death penalty and life imprisonment is determined by various circumstances regarding the offence itself and surrounding it. The paper also looks at different treaties and conventions that make an attempt at regulating the imposition of death penalty by various countries for serious offences.

Keywords: Death Penalty, aggravating factors, mitigating factors, 'Rarest of Rare', Constitutionality, International treaties

Statement Of Problem

India and Bangladesh each retain the death penalty for serious crimes although the standards for its application and judicial discretion are different. As a result, the sentences often lack consistency; similar cases attract extremely different punishments. Both these countries are similarly situated South-Asian countries which take into account different factors while meting out capital punishment for grave offences. But there are variations to imposition of death penalty. The paper would be

looking at international instruments governing the imposition of death penalty as well as a comparative understanding of imposing death penalty punishment for heinous crimes in these two countries.

Research Objective

- Looking at international treaties and conventions that deal with imposition of death penalty
- Understanding the nuances of imposition of death penalty in India and Bangladesh

Research Questions

- How do International Conventions and Treaties impact creation of domestic legislations regarding death penalty in different countries?
- What are the considerations that the Indian judiciary and Bangladeshi judiciary make regarding imposition of death penalty?

Research Methodology

The research methodology used in this work will be doctrinal in nature by consulting a number of legislation, books, articles, blogs, and research papers. Both primary and secondary sources served as the foundation for this essay. Online databases of newspapers, websites, and journals are examples of secondary sources. The paper only uses a small number of primary sources, such as statutes and clauses.

Introduction

Capital Punishment is one of the most controversial topics in spheres of discussion. It is an extreme form of punishment where we deprive a person of their right to life. A person being put to death goes against morality of civil society and yet it is seen as the last resort and the ultimate punishment. The debate is very old and rages stronger than ever. From one perspective it would seem justified and from another it would seem unjust. There are several international instruments which attempt to regulate the meting out of the same by the judicial authorities of different countries. Both India and Bangladesh are South Asian countries who do not use the death penalty

aggressively. There are also several factors employed by judges of both these countries while deciding between a sentence of life or death. Nonetheless, there exist variations in the application of the death penalty for capital crimes between these nations. There are also deliberations in both countries on how to effectively cater to the public cry for justice particularly in dealing with serious crimes while orienting the national mechanisms to the global abolitionist tendencies. They also reflect on the legal aspects as well as the moral concerns regarding the death penalty in Bangladesh and India when it comes to choosing between life and capital punishment.

International Framework

Capital punishment has not been explicitly banned in the international law framework. However, most conventions and treaties consider it to be a violation of human rights and have declared it to be torturous and cruel. Capital punishment can be said to be actively regulated through such treaties and covenants to which several countries are signatories.

The International Covenant on Civil and Political Rights does not outright abolish capital punishment but Article 6 guarantees right to life and provides important safeguards to be strictly adhered to for countries strictly retaining and meting out death penalty.

But, the Second Optional Protocol of International Covenant of on Civil and Political Rights directly aims at abolishing the death penalty.

The UN Human Rights Committee stated that death penalty should be an ‘exceptional measure’ and reiterated the importance of following strict safeguards for retentionist countries.

The Committee on the Rights of the Child prohibits use of torture and crand awarding of the death penalty to a persons below the age of 18.

The Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment also does not per se prevent death penalty but some methods have been considered

to fall under cruel, inhumane and degrading under it. This Convention has also been the source of jurisprudence regarding putting limitations to the imposition of death penalty.

Since then, however, International criminal courts including the Statute of the International Criminal Tribunal for the former Yugoslavia, The Statute of the International Criminal Tribunal for Rwanda, The Statute of the Special Court for Sierra Leone and the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, do not allow the death penalty as acceptable punishment.

Death Penalty was an acceptable in the Nuremberg and Tokyo Tribunals both of which had been established after World War II because of grievous crimes against humanity.

India is a signatory to ICCPR and CRC and has signed the Torture Convention but has not ratified the same. It is also signatory to the Vienna Convention which states that parties who have ratified International Treaties and Conventions have to be incorporated in their domestic laws. Also, the Convention states that countries who have only signed and not ratified cannot indulge in any activity or act that defeats the purpose or objective of the International instrument in question.

Our country has incorporated domestic legislations into our legal framework which are in consonance with International Conventions and Treaties which it is a party to. Apart from them, the Indian Constitution also under Article 51(c) has laid down that *'the state should promote respect for international law and treaty obligations in the dealings of organized peoples with one another.*' Courts of our country have also respected incorporation of the provisions of International instruments through various judicial pronouncements.

Imposition of Capital Punishment in India

Constitutionality of the death penalty

The Constitutionality of death penalty has been a wrestled with by the Indian judiciary. Article 21 of the Indian

constitution states that 'no person shall be deprived of their right to life or personal liberty without procedure established by law'[1]. The phrase 'procedure established by law' provides the judiciary with the power to impose death penalty and imprisonment for commission of offences.

The question of constitutionality of the death penalty was brought up in Jagmohan vs State of UP[2] in which the court held that the imposition of the death penalty could not be said to be violative of Article 21 of the Constitution.

In Maneka Gandhi vs Union of India[3] it was held that the imposition of death penalty must be done by employing an equitable and reasonable strategy.

In Deena vs Union of India[4] it was held that hanging is not a cruel of method of execution and hence, therefore not infringing Article 21 of the Constitution.

In Mithu vs State of Punjab[5] the Supreme Court held that Section of 303 of IPC was unconstitutional as being violative of Article 14 and Article 21 of the Constitution. However, the death penalty was itself was retained.

In Bacchan Singh vs State of Punjab[6] it was held that the awarding of the death penalty under Section 302 {Section 103 (1) of BNS} was not violative of Article 21 and that it should be imposed in a reasonable manner.

In Triveni Bai vs State of Gujarat it was held that there must be procedural fairness in imposition of the sentence of death penalty as well delay in the execution till the last breath of the accused.

Doctrine of rarest of rare

Crimes classified as rarest of rare are ones which are inherently dangerous in nature and have the capacity to shake the conscience of the country. The gravity of the offence, the after-effects of the crime, the isolated characteristics of the crime and the circumstances and the social response to the crime.

The Doctrine was established in the case of Bacchan Singh vs State of Punjab[7]. The court also coined the term

'rarest of the rare' in this case. But despite this, the court had not clarified exactly what were the cases which would fall in this category.

The case of Macchi Singh vs State of Punjab the court laid down criterias for determining if a particular murder case falls under the 'rarest of rare' category. These are as follows

- The Manner of commission of the murder
- The Motive for commission of murder
- The degree of social abhorrence of the crime
- The Intensity/Magnitude of the crime
- The personality of the victim(s)

The Doctrine itself can be divided into two major components: i) Aggravating factors ii) Mitigating factors. Aggravating factors are those which make the punishment for the crime more severe. Factors like previous convictions, significant harm to victim are aggravating factors. Mitigating factors are those factors which lessen the intensity of the punishment. Factors such as mental incapacity, little involvement in the commission of the crime (mere accessory), young age of the offender etc. would be extenuating or mitigating factors. [8]

In Santoshkumar Shantibhushan Bariyarand ors. vs State of Maharashtra[9] it was held that the rarest of the rare doctrine's biggest aspect is that life imprisonment is the rule and death penalty is the exception. It should be only be awarded in extreme circumstances and for particular crimes. There are differences in interpretations of the rarest of the rare doctrine in Indian cases between High Court judges and Supreme Court judges but the underlying understanding is that death penalty is the exception.

Imposition of Capital Punishment in Bangladesh

Judicial Purview of Capital Punishment

Under the Penal Code of Bangladesh, the criminal courts have power to award death sentence and life imprisonment for capital offences. Discretion has been conferred upon the

judges. In the case of BLAST and Others vs Bangladesh and Others[10] mandatory death penalty was made unconstitutional.

In Abed Ali it was held that the imposition of death penalty has to be justified. In State vs Sukur Ali it was held the Appellate division commuted death penalty to life imprisonment after considering extenuating circumstances. In State vs Oyshee Rahman, the court gave the alternate punishment of life imprisonment instead of death penalty.

In the Appellate Division and High Court Division of Bangladesh the trend appears to be that the commutation of death penalty to life imprisonment only happens when there are extenuating circumstances and in most capital offences the first preference goes to death penalty.

Understanding Special Circumstances

The criminal justice system of Bangladesh also has aggravating and mitigating factors. But the difference lies in the fact that Bangladesh has not specified the exact factors that can help judges in deciding between life and death. In the case of State vs Md Masud Rana factors like age, no past criminal record was considered to be extenuating factors.

In State vs. Md Fazlur, Rahman Tonmoy and Shahid Ullah and Shahid and Ors vs. State the brutality and heinousness of the crime were considered to be the aggravating circumstances. The factors which would be taken into consideration are completely up to the discretion of the judges which in turn depends on the psychology, his/her own emotions, media pressure etc.

The legal representation in Bangladeshi trials is also dismal and the Bangladeshi criminal justice system does not have any sentence hearing provision as opposed to Indian criminal justice system. This does not allow the convict to put forward compromising the right to a fair trial. Due to a lack of clear guidelines the discretion appears to be wide which is conferred upon the judges. The exercise of such discretion also appears inconsistent as well unfairly judge-centric. [11]

Suggestions

- The development of essential guidelines for sentencing between the two states should lessen the disparities of capital punishment decisions in cases.
- It is proposed to introduce a formal provision for the sentence hearing in Bangladesh similar to India.
- Improve access to effective, high quality representation in capital cases, especially for indigent defendants.
- Both nations can allow the review board to scrutinize death penalty cases from time to time, making sure each case meets the required standards of justice.

Conclusion

The capital punishment in India and Bangladesh is an detailed interfacing of legal principles, ethical issues, and social needs for justice in cases of outlandish and heinous crimes. Even though neither country actually abolishes the death penalty, they still award it carefully by reserving it only for the "rarest of rare" cases. However, it has issues in the assurance of confection in the application of sentencing criteria while addressing judicial discretion and coming into line with global trends towards human rights that are increasingly seeing the abolition of the death penalty. The paper reveals that inconsistency and judge-centric decisions continue to pose a challenge in the implementation of due process despite this effort to strike a balance in Bangladesh. Besides, international frameworks are always changing, and thus India and Bangladesh are increasingly compelled to re-appraise their policy on capital punishment to make it compliant with the global scale of standards on human rights.

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“Theories of Punishment: India’s Journey Towards Reformation”

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Abstract:

Punishment acts as a means to an end, primarily to repress crime. Various theories are built around it that help reap its benefits. Different theories of punishment seek to achieve different purposes of punishment and provides a different perspective to crime and methods of punishment. In the early ages, various methods of punishment such as flogging, whipping, mutilation, branding anf public execution were used but over the course of time, these methods have been rooted out from the criminal justice systems across the world. The reformative theory of punishment has been predominantly dominating in recent decades. It seeks to rehabilitate the offenders than just punishing them for their criminal acts. India pre and post-independence has encountered various prison reforms. As time passed by, these reforms started paying attention to harsh prison conditions and sought to achieve reformation and rehabilitation of prisoners and work on their peaceful reintegration into the society.

Keywords: prison, theories of punishment, reformation, rehabilitation, inhuman conditions.

Introduction:

P. K. Sen states that “Punishment is fundamentally a technique of social control and it is justified to the extent that it actually protects social justice that a society has achieved through law”. Through times, various theories of punishments have evolved and each one provides for a distinct approach to punishment, its purpose and what it tries to achieve. Some of the theories are retributive theory, deterrent theory, and reformative theory of punishment. A union of the element of retribution, deterrence and reformation may be suggested as

the best form of punishment.[1] Reformation is the act of reforming what is defective or evil, or the state of being reformed and reformation condemns all kinds of corporeal punishments.[2] The rehabilitation perspective embodies an assumption that the correctional system is expected to do more than exact just deserts from those who have harmed others—it is expected to reduce crime and foster public safety.[3]

Prions are not a novel concept. It's been in existence since time immemorial. India's modern prison system dates back to the British era and this era saw rigorous treatment of prisoners without paying heed to any of the humanitarian grounds. India since has seen various prison reforms, however, there are gaps and inconsistencies in law and procedure.

Statement of Problem:

Indian prison reforms through the years have undergone notable changes, but Indian prison administration has always faced setbacks with regard to the implementation of these reforms especially the rehabilitative programs for prisoners. This study aims to analyse the evolution of prison reforms in India, assess the issues that persists in Indian prisons and the way these problems affect the goal of reformation. The study also aims to delve into the primary purpose of punishment and the perpective of different theories of punishment towards the end goal of punishment.

Research Objectives:

To analyse the evolution of prison reforms in India and to evaluate the reformative theory and rehabilitation programs in the country.

Research Methodology:

The research methodology used in this study is doctrinal research. Secondary data such as legislation, model laws, government reports and statistics, articles, research papers, journals and other legal literature to understand and evaluate legal principles and theories. The data collection process also involves an extensive review of literature. Some of the literature referred to while conducting this research provides

data that can be used to make a preliminary analysis of this topic. The lack of empirical data will not affect the authenticity or tenacity of this study. All the sources used for this study are rigorously checked and are accurate and authentic ensuring veracity of all facts.

Punishment and Its Theories:

Punishment is a means of administering crime and criminal behaviour. According to the W.C. Reckless, punishment is a means of social control. As stated by Prof. N. V. Paranjape, "punishment under law is the authorised imposition of deprivations of freedom or privacy or other facilities to which a person otherwise has a right, or the imposition of special burdens because he has been found guilty of some criminal violation, typically, though not invariably, involving harm to the innocent. Thus, punishment may be defined as an act of political authority having jurisdiction in the community where the harmful wrong (crime) is committed."[4] The perspective on crime through the ages has changed. Many modes of punishment have been swept away and new modes have been introduced around the world. In ancient times, banishment, mutilation, torture and death were common modes of punishment. In the medieval India, punishments were given under Dharmashastras, Muslim law and other Western modes of punishment. In modern times, punishments are prescribed and regulated by the criminal codes of different countries. Currently, in India, punishments are prescribed under the Bharatiya Nyaya Sanhita, 2023 (BNS) and other criminal legislations passed by the Centre and States. Moving on, the primary purpose of punishment is a method of protecting society by reducing the occurrence of criminal behaviour, or else as an end in itself and punishment also has a subsidiary purpose and that is the elevation of the moral feelings of the community.[5] There are several theories of punishment evolved by philosophers that provide for different outlooks on punishment and the purpose it serves.

According to the deterrent theory of punishment, the object of punishment is to deter the offender from repeating the same course of conduct so that the persons and property of others may not be harmed.[6] The act that takes away the power to commit injury is called incapacitation and is in the form of a remedy operated by the fear that should be the object of punishment which is called deterrent theory.[7] Deterrence aims to use punishment to prevent the criminal from repeating the offence while also showing others in society the strong consequences of committing a crime. Retributive theory of punishment is based on the doctrine "Tooth for tooth, eye for eye, limb for limb and nail for nail". The theory presupposes that the pain to be inflicted on the offender by way of punishment must outweigh the pleasure derived by him from the crime.[8] The reformative theory of punishment serves a completely different purpose. The ideal of rehabilitation is to return the offender to society neither embittered nor resolved to get even for his degradation and suffering, but possessing a new set of values and morals and a desire to contribute to society.[9] Mahatma Gandhi's words "An eye for an eye blinds the whole world" can be said to be the foundation of this theory's application in India. The ultimate aim of reformists is to try to bring about a change in the personality and character of the offender so as to make a useful member of the society.[10]

Prison Reforms in India:

TB Macaulay played an important role in the origin of the modern prison system. The Prison Discipline Committee was appointed in the year 1836 and submitted its report two years later. One of the many recommendations includes the increase in rigorous treatment of prisoners without complying with any humanitarian standards. This shows the plight of prisoners during the British era. Construction of central jails started in 1846 after recommendations of the Macaulay Committee. A ray of light in the prison conditions could be seen after the recommendations of the Second Commission of Inquiry into Jail Management and Discipline that provided for

better accommodations, improved diet, beds, and medical care. The Indian Jail Reforms Committee set up in 1919-20 headed by Sir Alexender Cardio recommended a change from deterrent methods applied in the prison system to a more reformative and rehabilitative system. The Jails Reforms Committee set up in 1946 for the first time made recommendations regarding juvenile delinquents and also classified offenders into habitual, non-habitual offenders and women offenders.

All of these reforms set the base for India to work upon after its independence. The Prions Act[11] enacted during the British era continued post-independence and is still the principle governing Act to date. The Act hasn't gone through any major changes but there have been other Rules and Manuals released from time to time. Dr. W.C. Reckless, a United Nations correctional work expert was invited by the Government to reform the prison system in India in 1951. He took up the study and submitted a report 'Jail Administration in India'[12] which advocated for reformation and rehabilitation centres.

In 1957 the All India Jail Manual Committee appointed by the Government of India prepared a Model Prison Manual in 1960 that suggested amendments to the Prisons Act and also recommended a uniform system of administration. There were Model Prison Manuals of 2003[13] and 2016[14] as well. Apart from this, two more important committees played a crucial role in prison reforms in India: The Mulla Committee and the Krishna Iyer Committee. The former was constituted and worked from 1980-83 and the latter was appointed in 1987. The Mulla Committee submitted its report[15] that mainly focused on conditions in prisons, training of prison staff, and undertrial prisoners, and visits of media and the public into prisons. The Krishna Iyer Committee mainly focused on the conditions of women prisoners and more inclusion of women in the police force. The Ministry of Home Affairs is trying to replace the Prisons Act of 1984 with the Model Prisons Act

2023[16]. The Model Act provides provisions relating to punishment for prisoners and jail staff for using prohibited items within the jail perimeters, increased transparency in the prison system, and more high-security jails. The implementation of this Act is crucial as the British-era legislation can finally be done with.

Through this, we can infer that pre-independence prison reforms did not pay heed to prisoners' conditions in jail and were treated poorly by the authorities, which allowed no room for reformation of the inmates. But gradually post-independence the conditions improved and almost all states started implementing reformation programs in prisons. For instance, the Maharashtra government has introduced a landmark bill in the Legislative Assembly aimed at overhauling the state's prison system and the Maharashtra Prisons and Correctional Services Act 2024, proposes far-reaching reforms including open prisons for women, borstal institutions, and segregated facilities for women, transgender individuals, and civil prisoners.[17]

Major Problems in Indian Prisons:

While discussing the reformation of prisoners, it is crucial to lay out the current problems faced by prisoners in India. While these major issues exist, it is not fully possible to achieve the goal of reformation. Some of the issues are mentioned below:

Overcrowding: According to the Amitava Roy Committee on Prison Reforms[18], the first major problem faced by prisons is overcrowding. The highest rate of overcrowding was found to be in the district prisons, which was as high as 148% overcrowding. This is followed by central prisons with 129% over the actual capacity and in sub-prisons it was found to be 106%. The problem of overcrowding is directly related to the problem of prolonged detention of undertrial prisoners. To combat this, the Committee suggested the implementation of guidelines[19] given by the National Legal Services Authority with regard to strengthening the Undertrial Review Committee.

Health and hygiene: One cannot be denied the right to health on the grounds that one is detained and in prison. The Prison Act has certain provisions providing rights to prisoners regarding their health and well-being. Sick prisoners or ones appearing out of health, both bodily and in mind, who desire to see the medical doctor need to be reported to him without delay.[20] every prison shall have a hospital or a proper place for the reception of sick prisoners.[21] Article 21 is applicable to prisoners as well, it provides the right to life and personal liberty. States and Union Territories have taken measures to improve prisoners' health and well-being. Indian Prisons Statistics, 2022 shows that Andhra Pradesh has implemented a state-sponsored Dr. YSR Aarogyasri Health Scheme that is available to the general public and to prisons also. In Bihar and Gujarat, there are arrangements made for regular periodic medical camps with specialized doctors and counselling for the treatment of prisoners.

Suicides and other unnatural deaths: Out of 159 reported unnatural deaths, suicides top the list with 119 suicides followed by accidental deaths, murders, and assaults. The issue of suicides can be cured with proper enforcement of reformative and rehabilitative methods and psychological support from the state.[22] India believes in reformation and proper methods need to be implemented to allow prisoners' smooth reintegration into society as well. The Justice Amitava Committee in its 2022 report[23] suggested the construction of suicide-proof barracks which has collapsible material. But other factors like education, employment, exercise, and other activities keeping prisoners both busy and aiding rehabilitation will also help decrease this number shown in the data above.

Abuse of prisoners and custodial deaths: Between April 2017 and March 2022 the Ministry of Home Affairs submitted to the Rajya Sabha[24] that a total of 669 cases of custodial deaths were registered in the country. Tamil Nadu's police administration faced backlash for its police brutality and custodial death, especially during the Covid-19 pandemic

when a father-son duo were brutally tortured and killed by the police in the Thoothukudi district of the state. The action only led to the suspension of two sub-inspectors and an inspector. This shows the unsatisfactory response from the state. The ministry also reported to the Rajya Sabha that Gujarat has the highest number of custodial deaths in the last five years with a shocking number of 80 deaths followed by Maharashtra, Uttar Pradesh, Tamil Nadu, and Bihar. The National and State Human Rights Commission needs to be more proactive in combatting this issue and states need to take strict measures and prosecute the officials responsible for these deaths without immunity.

Open Prisons:

Open prisons act as a means to achieve the end of reformation that India, in this day and age, is constantly striving to achieve. The concept of open prisons was introduced in India right after independence in 1949 when the first model open prison was established in Lucknow. Open prisons are correctional establishments where there is minimal supervision over the inmates with perimeter security. The areas are wider than traditional prisons and inmates are not locked up in cells and are let to be free within the area. Chapter XXI of the Model Prison Manual, 2003[25] extensively discusses open prisons with provisions relating to personnel, transfer, open training institutions, semi-open training institutions, and open colonies. Open prisons are based on the principles of reformation and rehabilitation instead of retribution and deterrence.[26] It is believed to inculcate self-discipline and cultured life and allows easy reintegration into society after release. There are certain categories of prisoners who are not eligible to enjoy the privileges of open prisons, including habitual offenders, prisoners who are considered dangerous and notorious, and those who were involved in jailbreaks, assaults, and escapes. There is a Classification Committee that screens prisoners based on certain criteria like their character, record of self-discipline, and group adjustability,

recommending them for transfer to different categories of open prisons. It is also to be noted that these prisons are specifically designed for convicts only and not undertrials. This comes as a shortcoming to the concept.

According to the Indian Prisons Statistics 2022, there are a total of 91 open jails in India. Only 17 states have established fully functioning open prisons among which Rajasthan has the highest number with 41 open jails followed by Maharashtra, Madhya Pradesh, Gujarat, West Bengal, and Tamil Nadu. The North-Eastern states and all Union Territories do not have open prisons. The Supreme Court provided direction to consider introducing more open prisons wherein it stated that for the greater good of society, we need criminals to get out of jail as reformed individuals for easy social reintegration and this could be achieved through open air jails.[27] The major shortcoming of open jails is the easy escape of inmates. Almost 28 inmates of Maharashtra's open jails have been reported to have escaped in the last five years.

An Article by Kavitha Yarlagadda provides first-hand interviews and experiences of inmates from open prisons and the way it has changed their outlook on life and helped in easier reintegration back into their lives.[28] The Ex-Director General of Prions, Rajasthan commented it to be the the biggest reform of the 21st century.

Conclusion:

Theories of punishment aid in understanding the purpose of punishment and different countries' criminal justice system uses these theories to set their punishment standards. Although the Indian Penal Code, 1860 and now the Bharatiya Nyaya Sanhita, 2023 seem to follow the deterrent theory of punishment, the prison reforms in India have evolved to ensure better standards for prisoners that allow reformation. Reformation theory believes in the concept that *"hate the crime not to criminal"* and that nobody is born as criminal it is only the consequences of those circumstances which were around of him.[29] India after independence saw multiple

significant reforms and there are legislations, rules, regulations, and manuals in place to regulate the prison system but what lacks is practical enforcement. India follows a system of checks and balances and if this is strictly followed with regard to the prison administration as well, we would be able to see an immense change and growth within the system. Concepts like open prisons are introduced but it is taking time to pick pace. India's prison system has come a long way but it still has a long way to go to reach its international compliance goals and in upholding a balance between social interest on one side and protecting prisoner rights on the other.

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A Comparison of Laws Addressing Custodial Torture and Violence - USA and India

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Abstract:
Pertaining to the topic, child abuse forms a part of custodial violence tortures, basic human rights being infringed all over the world. This paper explores the two legal systems of United States and India in understanding the provisions and ways followed to avoid, investigate and punish cases of custodial violence. Although both nations acknowledge torture as unlawful, both have different structural, implementation, and successful legal measures. By examining the constitution, statutes, and case laws intended to protect whistle blowers, this paper analyses merits and gaps in the offered system. Then the study provides recommendations for enhancing the laws in the two countries and implementing effective mechanisms to protect Human Rights.

Keywords: Custodial Torture, Custodial Violence, Human Rights, Law, Constitution, Legal Framework, Police Brutality, USA, India, Judicial Intervention

Statement of Research Problem:

Much as the two regions have provided for laws against custodial torture and violence, the vice is still rife. The research problem mainly revolves around the causes of failure of the current legislation in controlling violence in both the countries in custody. It seeks to establish whether the problem is in the formulation of the laws, the kinds of enforcement procedures that have been developed and implemented or the socio-political factors of the two nations, and how the laws of

the two countries can be compared and assessed for efficiency in eliminating custodial violence.

Research Objectives:

1 The study aim is to identify the constitutional and legal controls in relation to custodial violence in the USA and India.
2 In order to do a comparative study on the effectiveness of the enforcement mechanisms for both the countries in relation to stopping custodial torture.
3 In an attempt to compare the effectiveness of judiciary and human rights commissions of dealing with the vice of custodial torture.
4 In Ach, the objective was to establish the areas of weakness and difficulty in the legal systems of the two countries.
5 To suggest the changes required and policies in the USA and India to improve legal perspective towards combating custodial violence.

Research Methodology:

The study employs a comparative legal research method. The research is based on qualitative analysis, relying on primary and secondary legal materials. Primary sources include constitutional provisions, statutes, case laws, and official reports from human rights commissions and legal bodies in both the USA and India. Secondary sources include scholarly articles, books, and reports from international human rights organizations. This study also considers historical and socio-political contexts to provide a deeper understanding of the legal frameworks in both countries. A doctrinal analysis is combined with an empirical approach by reviewing reported cases of custodial violence and their legal outcomes.

Introduction

Custodial torture and violence are forms of human rights violations occurring globally, despite international efforts to curb such practices. Custodial violence refers to abuse, torture, or assault perpetrated by law enforcement officials, usually

within the confines of a police station or prison, targeting individuals in custody. The[1] United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) aims to eliminate such practices, but enforcement at the national level remains inconsistent.

In the context of the United States and India, both countries have legal frameworks addressing custodial violence. However, they differ in their approaches due to distinct political systems, historical contexts, and socio-legal challenges. In [2]the United States, custodial torture is prohibited under constitutional amendments and federal laws, with judicial oversight playing a critical role. India, while having robust constitutional guarantees and statutory provisions against torture, continues to struggle with widespread custodial violence, with systemic issues in enforcement and accountability.

This paper seeks to provide a comparative legal analysis of custodial torture laws in the USA and India, examining the strengths and weaknesses of each system, and offering recommendations for reform.

Definition of torture

The United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment stands as the most comprehensive legal framework addressing torture, providing the most widely recognized definition. According to Article 1, "torture" is defined broadly as any act in which severe physical or mental pain or suffering is intentionally inflicted on a person to obtain information or a confession, punish them or another person for an actual or suspected act, intimidate or coerce, or for discriminatory reasons. This act must be carried out, instigated, consented to, or tolerated by a public official or someone acting in an official role.

In Sanian v. Lithuania, the cour[3]t stated that "Article 3 does not refer exclusively to the infliction of physical pain but

also of mental suffering, which is caused by creating a state of anguish and stress by means other than bodily assault.

1. Constitutional Provisions Addressing Custodial Torture

In the United States, the 5th and 14th Amendments protect individuals from custodial torture by guaranteeing due process and protection against self-incrimination. The 5th Amendment prevents individuals from being compelled to testify against themselves, while the 14th Amendment ensures that states cannot deny anyone life, liberty, or property without due process of law. Additionally, the 8th Amendment prohibits cruel and unusual punishment, further protecting detainees from torture. In Miranda v. Arizona, the Supreme Court ruled that suspects must be informed of their rights, including the right to remain silent, to prevent coercive interrogation, and to uphold constitutional protections in custody.

Articles 20 and 21 of the Indian Constitution protect individuals against custodial torture and ensure the right to life and personal liberty—article 20 safeguards individuals from self-incrimination, protecting them from being forced to testify against themselves. Article 21 guarantees the right to life, which includes a life with dignity, inherently prohibiting torture or inhumane treatment. In the landmark D.K. Basu v. State of West Bengal case, the Supreme Court issued guidelines to prevent custodial violence, emphasizing the duty of the state to uphold constitutional rights and establishing accountability measures to safeguard individual dignity and liberty.

2. Statutory Frameworks and Legislative Measures

The Civil Rights Act, specifically 18 U.S.C. [4]makes it a federal crime for any individual acting "under color of law" to will fully deprive someone of rights protected by the U.S. Constitution or federal laws. This statute aims to address abuses of power by officials, such as law enforcement officers or government employees, who might exploit their positions to violate civil rights. Penalties under this law range from fines to

life imprisonment, depending on the severity of the violation, especially if bodily harm or death results.

The Prison Rape Elimination Act (PREA),[5] enacted in 2003, specifically addresses the widespread issue of sexual abuse in detention facilities. PREA mandates a zero-tolerance policy for prison rape and requires correctional facilities to implement preventive measures, staff training, and support services for victims. The act also enforces data collection and annual audits to monitor compliance, ultimately aiming to reduce and eliminate sexual abuse within correctional systems across the United StatesSections 330 and 331 of the Indian Penal Code (IPC) address the infliction of harm to extort confessions or information, or to compel the restoration of property. Section 330 penalizes voluntarily causing hurt, while Section 331 covers voluntarily causing grievous hurt to extort confessions, with harsher punishments. Although India signed the United Nations Convention Against Torture in 1997, the Prevention of Torture Bill, which sought to criminalize torture and align domestic laws with international standards, lapsed in 2010.

The Criminal Procedure Code (CrPC)[6] provides safeguards to prevent abuse in detention, such as mandatory medical examinations and prompt production before a magistrate (Section 54, 57). These safeguards aim to protect detainees' rights and prevent inhumane treatment. However, without specific anti-torture legislation, implementation challenges persist, leaving a significant gap in India’s legal framework for addressing custodial torture and related abuses.

3. Judicial Responses and Case Law

Graham v. Supreme Court decisions as Tennessee v, as well as Connor (1989), hold a common opinion in this respect. According to Garner (1985) some of the general principles as regards to requirement of police force especially the use of force/police brutality and custodial violence are as follows. In Tennessee v. In Garner*, the Court also pointed out that police officers cannot shoot at a suspect who is fleeing if he is not

dangerous to the extent that he can kill one or more persons. This case also concentrated on the aspect of when it is legal to use lethal force. Later, Graham v. Connor was the first to accept 'battle ready' force as 'objective reasonableness'; therefore, the use of force is predicated on the rationality expected of the officer based on circumstances anchored on a 'perceived severity/threat'. Such decisions are supposed to mitigate the concern for common law policed responsibilities in preserving order in addition to meeting constitutional enforcement responsibilities of citizens in the formation of policies that aim at regulating the conduct of policemen across the country.

In India, classical Judgment from the Supreme Court like D.K.Basur v. State of West Bengal (1997) and Prakash Singh v. States in India and particularly Union of India (2006) which have been instrumental [7]in combating ticket violence and police brutality. In *D.K. Basu*, the Court provided certain directions for the protection of the rights of detainees; the directions impose responsibility for violence by the police and other custodial officials on the State. Some of such guidelines is arrest. Reporting to the relatives of the detainee, and medical examination to prevent the detainee from being abused by the police.

In Prakash Singh v. To eliminate political influence over the police and to make the force efficient and accountable, which is one of the principal objectives of the supreme Court of India in the case of Prakash Kadhre and Ors v. Union of India. The Court gave guidelines for the formation of specific commissions for police recruitment and transfers, fixed tenures for the officer and division of detective and police maintaining the law and order responsibilities. Each judgment constitutes progressive developments in the enforcement of human rights and reform of police systems in India.

4. Human Rights Commissions and Oversight Bodies

The United States Department of Justice Justice (DOJ) has its Civil Rights Division that prosecutes civil rights laws

that protect citizens against unlawful conducts like police brutality. More often than not it will consider doctrine on police brutality and patterns of racially discriminatory police. Secondly, Independent monitor, no other entities are more qualified in this than NGOs and civil society organizations like [8]ACLU and HRW. I am amazed how these organizations document abuses that are afterwards succeeded by policy transformations and campaigns that name and shame police misconduct that assists in reminding the police and civil rights that in the United States of America, they have to be answerable.

NHRC and the State Human Rights Commission, SHRCs of India have significant operational roles in protection of rights of humans. The human Rights commission is autonomous organization usually charged with the role of conducting research on violations of human rights particularly by government agencies and make its recommendations known to the government. It has the ability to attend to cases of violence against custody, police ill-treatment, institutional harm. SHRCs are at state level and being like other national organizations function concerning regional matters and complains. Together they are useful in providing accountability, conducting inquiries and reviewing policies for changes with respect to which enhancement of human rights in India under Protection of Human Rights Act, 1993 is sought.

5. Enforcement Mechanisms and Challenges

Police use of force in the United States is increasingly supplemented by body-worn cameras (BWCs)[9] that record police-citizen interactions. These recording are very useful in any police matter especially in confirming officers' conduct as evidenced by the video that accompanies the recordings. They have also been found to enhance accountability since it enhances the operation of officers and civilians involved in the breakdown of the law. Still, concerning difficulties, such as storage expenses, privacy matters and unequal practices

regarding which moments in the periods the officers have to follow the video before providing statements.

Citizens, media and advocacy groups have come to demand policies that enhance the disclosure of BWCs so as to make widespread usage of the devices in building trust with the community as have reached a point of demanding implementation of the accountability of the officers involved.
India's [10]police forces face systemic corruption and accountability challenges, with deep-seated issues affecting the quality of law enforcement. Police often lack independence due to political interference, leading to biased investigations and mismanagement of resources, which can hinder justice and accountability. This political influence affects crime investigations, public interactions, and the effectiveness of internal reforms.

The judiciary also struggles with delays in processing cases due to limited resources and infrastructure, which further slows justice for citizens. [11]The backlog of cases and insufficient evidence collection reduce conviction rates, contributing to public mistrust in the justice system and allowing corruption to persist without sufficient accountability.

6. International Obligations and Compliance

The United States while being a party to UNCAT has not even signed into law all provisions of the said agreement more so those touching on domestic enforcement. The UNCAT lays down certain measures to eradicate torture and other inhuman treatments, with the minimal goal of increasing responsibility. To some extent, the United States exercises human rights diplomacy wherever encouraging UNCAT principles and campaigns against torture are concerned. At home, DoS's annual human rights reports and federal laws such as the TVPA do represent this buy-in, although more urges in form of compliance and accountability improvements from UN and other emit.

India's refusal to ratify the UN Convention Against Torture (UNCAT), despite signing it in 1997, has significant

implications for its stance on custodial torture and human rights. The lack of ratification leaves a gap in India's legal framework, with no standalone law to address or prevent torture, which has led to numerous custodial deaths and instances of police brutality going unpunished. Legal experts and rights organizations argue that without ratifying UNCAT, India struggles to align its laws with international human rights standards. Civil society groups continue to push for anti-torture legislation and police reforms, urging India to uphold its commitments to human rights, particularly given its position on the UN Human Rights Council.

7. Reforms and Recommendations

To enhance enforcement mechanisms and reduce custodial violence in both the [12]USA and India, reforms should be recommended that focus on strengthening independent oversight bodies and bolstering civil society's role. For the USA, improving transparency with independent review boards and expanding the Civil Rights Division's powers could boost accountability. Body cameras and data transparency initiatives are also critical for deterring misconduct. In India, forming autonomous, local Police Accountability Commissions (PACs) and empowering the National Human Rights Commission (NHRC)[13] to enforce stricter custodial safeguards are essential. Furthermore, civil society's involvement through awareness campaigns and reporting mechanisms can strengthen overall accountability, fostering a culture of transparency in law enforcement.

Conclusion:

In conclusion, addressing custodial torture and violence requires a balanced approach, encompassing legal, structural, and social reforms in both the United States and India. While the U.S. has established mechanisms like the Civil Rights Division and uses body cameras to monitor police conduct, it faces challenges such as racial disparities and calls for greater transparency and accountability. In India, despite constitutional safeguards and judicial interventions like D.K. Basu v. State of

West Bengal, custodial abuse persists, often exacerbated by political interference and lack of independent oversight. Strengthening enforcement agencies, creating independent police accountability bodies, and involving civil society can significantly enhance transparency and reduce abuse in both countries. A collaborative approach that includes public awareness and international cooperation could be key to more robust human rights protections and reduced custodial violence globally.

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A Comparative Analysis of Perjury Legislation: India and Global Perspectives

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Abstract:

The paper displays a profound comparative study of the perjury law with major references to India and comparison contrasts of diverse global viewpoints. Here, the objective remains to explain the legal regimes regarding perjury laws, the problem of enforcing them, and the implications of delivery of justice in India in contrast to other jurisdictions. The foundational writing of introduction pushes forth the need for powerful perjury laws as a basis of a fair judicial process. For India, perjury lies within its Criminal Code (BNS), which cover giving false evidence and perjury itself. However, while these sections enumerate punishments-most notably, imprisonment for up to seven years-their practical exercise is often seen to be incongruent. The procedure for instituting perjury cases can be tedious and be subject to previous judicial approval that may discourage victims from seeking redress.

This paper presents a comparison of how common law jurisdictions-the United States and the United Kingdom, for example-handle perjury. In general, the classifications of perjury would be considered a felony and have more detailed statutory provisions and simplified prosecution procedures under such jurisdictions. For instance, in the federal law of the United States, it clearly has specificity in terms of what constitutes perjury and provides more stringent repercussions against lying on stand. This comparative gaze has shown that although India has existing legal provisions, they are not as clear and binding as they are in other jurisdictions. But, more importantly, this role of judicial interpretation is crucial in

establishing the stance of perjury laws. The Indian Supreme Court has clearly clearly made out in recent judgments conditions that must exist before the case of perjury can become successful: the witness's statement may have inconsistencies, but it does not amount to perjury unless proved to have been made with a fraudulent intent to deceive. The Indian Supreme Court is different in its approach from other systems, where judicial discretion may allow more elastic interpretations that would lead to prosecution.

A major challenges have come to be identified in the determination of perjury under the Indian legal framework: first, the propensity to underreport cases because it's viewed as too complicated and because one might have an axe to grind for making such reports; second, judicial discretion leads to an inconsistent application of the law; third, generally, public awareness regarding the effects of giving false testimony is dull. These befit a culture wherein, perhaps more than anywhere else, perjury goes unpunished and enables public mistrust in the effective functioning of law. This paper brings out a variety of suggestions towards altering the Indian approach toward the legislation of perjury. Harmonization of procedural requirements for initiating prosecutions, focused, targeted public education campaigns for the gravity of perjury, and bringing Indian legislations at par with international standards shall fortify uniformity and strength behind enforcement.

This comparative analysis marks significant disparities between India's approach in handling perjury and that followed by other jurisdictions. The areas of potential reform identified by the study itself must contribute meaningfully to debates over judicial integrity and accountability in India. It goes a step forward beyond strengthening perjury legislation towards ensuring the course of justice but, more importantly, towards reviving public confidence in the judiciary as an institution that is willing for justice.

Objective:

The main objective of the research paper is to critically evaluate and compare the effectiveness and enforcement of perjury laws in India with those in various global jurisdictions, in order to identify gaps and propose reforms that enhance judicial integrity and accountability in the Indian legal system.

Keywords: Perjury, False Evidence, Criminal Justice System, India, United Kingdom, United States

1. Introduction

1.1. General Definition

It is defined as an act of false assertion of matter of fact, opinion, belief, or knowledge under an oath while in a judicial proceeding. To commit perjury, the person must have known that his assertion is false and with the intent to mislead the court, jury, or any presiding authority over the legal matter[1].

The reforms proposed at the start of the nineteenth century for the law of evidence in the UK, and the campaigning for reform, have their origins mainly in Jeremy Bentham's Rationale of Judicial Evidence[2]. He supported an inclusionary system of "natural procedure" that allowed all evidence to be admissible and therefore open to a rational judgment-against traditional exclusionary rules. He demanded that truth was compounded for being spoken in court and listed several penalities against perjury: physical-the pain of falsehood; moral-society's disapprobation; political or legal-criminal penalities; religious-the pressure of oaths. In reconciling open evidence with controls to maintain integrity at trial, Bentham's work responds to this utilitarian view of truth, reasonableness for the law.

Historically, in the US earlier generations saw perjury as a grave sin, sometimes worse than murder because it could result in eternal damnation[3]. The importance of oaths to society was underscored by their inclusion in the most important constitutional provisions and underscored by landmark decisions made by the Marshall Court, which effectively placed emphasis on the weight of sworn statements. Over time,

societal perspectives have changed; perjury has very much lost its religious connotations and is seen in society mainly from the point of view of the legal implications. But in that degree, there are still cases wherein the punishment for perjury outweighs that of the actual crime[4].

1.2. Statutory Definition

1.2.1. Section 227 of Chapter XIV of Bharatiya Nyaya Sanhita (BNS) deals with the provision of giving false evidence. Giving false evidence unravels each time there is somebody who, having a legal obligation to say the truth—either on oath or under any particular legal provisions—is making a statement known or even believed to be false. Such acts are held as an act of giving false evidence. Accordingly, this offense is punished under Section 229 of the BNS with imprisonment and a fine, which shall not be less than seven years. Further, it is noteworthy that the present crime is non-cognizable and police cannot independently start an investigation or lodge an FIR without express permission from the court.

1.2.2. Per contra, in the United Kingdom, there exists a completely different criminal statute regarding perjury. The Perjury Act of 1911 was enacted with effect from June 29, 1911, so as to consolidate and simplify statutes relating to perjury and other allied offenses. The Act defines as perjury the act of any person lawfully sworn as a witness, deliberately making a statement that he knows or, to the best of his belief, is false and material to the proceeding. This definition closely follows that found in the BNS. Historically, British law has left its stamp on the legal regime of India. Perjury has a provision which carries an imprisonment period that may go up to a number of seven years.

1.2.3. Being a common law jurisdiction, the United States is governed by a dual system of federal and state statutes. This results in alteration from state to state in perjury laws, while uniformity prevails at the federal level. There are

several federal statutes dealing with perjury and allied crimes, but the ones most often used are 18 U.S.C. Sections 1001, 1621, and 1623. Section 1621 remains the principal statute to prosecute perjuries committed before legislative, administrative, or judicial bodies. Section 1623 was enacted in 1970 with the focus being on false statements made to federal courts and grand jury proceedings. In Hubbard v. United States[5], it was held by the Supreme Court that both Sections 1621 and 1623 can punish false statements made during judicial proceedings. Earlier, the Court held that Section 1001 did not cover statements made to the judiciary; however, in 1996, Congress amended this statute to include judicial along with legislative branches.

2. History

2.1. India

- Colonial Era: The British enacted the Indian Penal Code (IPC) in 1860. The IPC defined perjury as giving false evidence under oath under Section 191. It was a codified Indian Penal Code which sought to standardize the laws of India and incorporated all of the principles of British law.
- Post-Independence: India maintained the IPC after gaining independence in 1947. In these judgments, the judiciary has espoused the importance of truth in judicial proceedings: Thus, the Supreme Court held that perjury ruins the whole concept of justice delivery and upholds severe punishment for the presentation of false testimony.
- Latest Developments: The IPC and the adoption of the Code of Criminal Procedure has undoubtedly thrown further light in ensuring that procedures to prosecute perjury are further thrown into relief. The courts still deal with perjury with the issues concerning protection of witnesses and integrity of the process of the law. Now that the three Criminal statutes are transformed into BNS, BNSS and BSA, the principle of perjury remains the same under different heads and provisions.[6]

4.2. United Kingdom

- Historical Background: Perjury has been a common law offense in England since medieval times with significant developments through statutes. The landmark legislation, particularly the Perjury Act of 1911, codified the offense and made it less complicated to prosecute perjury in both civil and criminal cases.
- Perjury was defined together with the proof that false testimony has been given under oath by the jurisprudence of UK courts. Cases like (1975) also worked out standards for the proof of acts of perjury with a focus on materiality and on intent.[7]
- Current Issues: Legal framework in perjury remains a moving target of discussion, as it has been considered overly inadequate and. In this respect, topical issues within the debate include the role of perjury in witness protection within the UK and how false testimony impacts justice systems.

4.3. United States

- There are intrinsic values going as far back as the early U.S. legal system, and the codification of the federal statute is located in Title 18, Section 1621, U.S. Code. Perjury essentially refers to an act of testifying falsely, done knowingly, after an oath or affirmation, and clearly shows how truth is important in judicial proceedings.
- Jurisprudence: Cases[8] established landmark interpretations of perjury, stating that a witness can be convicted with regard to perjury if it is proved that he made false testimony knowingly on a material point. The Courts also held their ground regarding the complexity of attempting to prove perjury which clearly involves manifest intent and falsehood.
- Contemporary Context: The perjury phenomenon of today is also informed by new technologies, like e-evidence, and formats of testifying. The American legal system remains to

be burdened with the outcome of perjury on public trust and judicial process integrity.

3. Comparative Analysis of the laws in the three countries: India, UK and US

3.1. Definition and Terminology:

- India: The word "perjury" is not used specially under Indian law; instead, the crime falls under "false evidence" in Section 227 of the BNS. It is a false statement made while under oath or bound by law to speak the truth.
- UK: The UK's Statute is called the Perjury Act 1911. Perjury is defined as making a false sworn declaration knowingly in any judicial proceeding.
- USA: Federal law at 18 U.S.C. Sections 1621 and 1623 state that perjury is false swearing before either the legislative or a judicial tribunal.

3.2. Constituent Elements:

- India: Such elements include a false statement by a person who is legally bound to state the truth and who either knows or believes that his statement is false.
- United Kingdom: It has similar elements, wherein a sworn witness knowingly made a false statement material to the proceedings.
- United States: The elements vary in different jurisdictions but typically require that the individual knowingly make a false statement under oath.

3.3. Punishment:

- India: According to Section 229 of the BNS, the punishment for false evidence is imprisonment for up to seven years and a fine.
- United Kingdom: The penalty for perjury is imprisonment for up to seven years.
- United States: Federal perjury penalties include imprisonment for up to five years. State laws may vary.

3.4. Investigation and Prosecution:

- India: The forgery of any document is not a cognizable offense. To investigate it, a magistrate's permission is necessary. Its procedure is also provided for in Section 379 of the BNSS.
- United Kingdom: Perjury is thought to be a very serious crime, and Crown Prosecution Service provides a direct prosecution without preliminary inquiry.
- United States: In cases of perjury, federal authorities have their direct authority for prosecution. States may use different mechanisms or processes to deal with such cases of perjury.

3.5. Legal Perspective and Historical Background:

- India: The IPC was an era of British rule, hence borrowed much from British law and represented the same precepts on false evidence and perjury.
- UK: The Perjury Act of 1911 was enacted to assimilate various enactments made in relation to perjury and to remove anomalies, confusions, and inconsistencies in the law.
- US: U.S. perjury laws are derived from English common law, but have undergone several changes over time to meet federal incorporation and states' needs.

4. Judiciary's Interpretations

4.1. INDIA

4.1.1. Murray & Co. v. Ashok Kr. Newatia (2000)[9]: In this case, the Supreme Court deals with the matter of false statements included in an affidavit about the income of the respondent. The court mentions that making a false statement in a court proceedings is perjury and observes that perjury proceedings are to be initiated once such false statements are discovered.

4.1.2. Sejalben Tejasbhai Chovatiya v. State of Gujarat (2016)[10]: The wife was also charged with false statements when it came to her own case- a case for maintenance against her husband. The Gujarat High Court refused to set

aside the invocation of proceedings for perjury against her when she made false statements, hence strengthening the legal sanctions of false testimony.

4.2. UNITED KINGDOM

4.2.1. R v. Brown (1993)[11]: This one being a mainly consent and bodily harm case also had some points of perjury related to testimonies given by those who were actually involved in the sadomasochistic activities, demonstrating just how serious perjury is when presented in maintaining legal standards.

4.2.2. R v. H (2004)[12]**:** In this case, a defendant was charged with perjury, making a false oath, while a witness in a criminal trial. The Court of Appeal underscored the significance of truth in proving evidence and clarified that perjury vitiates the judicial process.

4.2.3. R v. R (2007)[13]**:** In this case, the defendant had been convicted of perjury because he gave false evidence to a family court. The decision reiterated that perjury is a serious crime which could result in substantial sanctions, and the courts are under a duty to protect the integrity of truth in the process of law.

6.3. UNITED STATES

6.3.1. United States v. Dunnigan (1993)[14]: This was one of the landmark decisions wherein the Supreme Court had dealt with a question of perjury in relation to testimony by a witness in a trial. The Court held that a witness can be convicted of perjury where such witnesses knowingly made false statements, thus upholding its damage to the integrity of the court.

6.3.2. United States v. Kahn, 415 U.S. 143 (1974)[15]**:** This case presents a defendant who had been accused of perjury for having made false statements under oath in the course of a grand jury inquiry. Judgments thus made clear that false statements in judicial contexts are penal offenses which underpin honest testimony.

6.3.3. Hubbart v. United States (1998)[16]: In this, it was clear that Supreme Court sections 1621 and 1623 may be used to charge false statements before judicial tribunals, and hence, perjury is within the prosecution powers, and indeed, the sentence it merits is severe.

7. Conclusion

A comparative review of perjury laws and statutes in India and other global jurisdictions reflects significant similarities and differences that further draw attention to the need for reform at the highest level to handle this serious offense. Although, technically speaking, perjury is part of the wider category of false evidence under the Indian Penal Code, the absence of explicit terminology and procedural challenges in cases of its prosecution call for reform. The reason it is only because of very old colonial laws that the Indian system relies on is that it therefore does not have swift or strict enforcement and understands that perjury is not being sufficiently punished.

Contrastingly, countries like the UK manifestly define statutory provisions and, via laws such as the Perjury Act of 1911, outline more defined frameworks to approach false evidence. On the other hand, the United States has a dual system of federal and state statutes on perjury, which shows a keen interest in maintaining judicial integrity through proper legal frameworks.

Lastly, the implementation and cultural context of truthfulness in courts determines effectiveness for perjury laws. With an emerging need for legal restructuring in India comes an imperative improvement in accountability to curb dishonorable practices in courtrooms. Strengthening the legal framework involving perjury will help uplift trust in the judiciary as it delivers fair justice universally.

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SEBI's Role in Corporate Governance

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Abstract

One of the illegal tactics and practises which is now being blamed on corporate sector world wide, and this illegal tactic and practice are very curse for corporate sector. Maintaining Codes of Ethics and Policies are designed to prevent corporate entities from acting unethically. Corporate governance is one of the most effective tools and mechanisms to liberate corporate entities from these, Besides for their success and sustainability as well. This essay attempts to explore how SEBI, using clauses 35B and 49 of the listing agreement, have been instrumental in enforcing Indian corporate governance standards on companies. In this paper an attempt has been made to discuss the role of SEBI through clause 35B and clause 49 of the listing agreement in compelling companies to comply with corporate governance norms in india. SEBI by means of the norms as well as provisions enclosed in clause 35B and clause 49 to listing in carrying convincing bar on corporate to provide with the standards of corporate governance.

Objectives

1. Studying the SEBI's role in corporate governance.
2. To evaluate how SEBI contributes to corporate maintenance and governance

Methodology

The research methodology adopted in this paper is based upon doctrinal research with in depth study of the subject exploring the relevant legislative enactments, law books and it is based on an abundance of courts decision to study the medical negligence under the consumer protection act.

Findings:

In India, the key regulatory bodies and authorities such as Companies Act, SEBI, ICAI, ICSI etc. time to time puts forward various laws rules & regulations with an objective of a sound corporate governance framework in the corporate sector. The provisions of the SEBI guidelines under revised clause 49 & its sub-clauses will bring about far better and efficient corporate governance practices in India.

Keywords: Corporate Governance, Companies Act 2013, SEBI, Stakeholders

Introduction

Corporate governance is a tool applied by companies to magnitude its efficiency and accountability. Company policies which include the entire manner, methods and even process of how they operate. In other words, it determines who owns what and to what end. People that matter in the way of corporate governance: Board of directors, shareholders, investors, employees, advisors. Corporate governance has aka as organizations soul which needs to be safeguarded for the betterment of company and to maintain competitiveness. Good corporate governance ultimately allows the company to garner more customer base and goodwill for the company which helps in grossing profit therefore; it is important for companies. But bad corporate governance raises the question mark on company and thus needs to be avoided. Corporate governance has become part and parcel of several issues –business practices to accounting standards; corporate social responsibility to supply chain management; a way for preventing possible financial crisis to a device for attaining macro/microeconomic stability, to increased political economy.[1] Even so, the Indian corporate governance scene is a work in progress, and along with notable improvements it has not been devoid of issues. Our study aims to unpack these challenges through a critique of related-party transactions, board independence, executive remuneration, shareholder activism and the role institutional investors play regarding

these issues. Alleviating these issues is important to facilitate good working of boards, protection of minority shareholder rights and reduction for risks associated with governance. The paper will also provide a glimpse of potential developments and opportunities for the business sector in India in terms of corporate governance. Cultivating emerging trends like digital governance, environmental and social factors, and stakeholder engagement offers an opportunity to enhance this culture of governance while also growing a sustainable business.

The Evolution of Corporate Governance in India

All modern industries and services in India, at least roughly since the second half of nineteenth century up to now, have been organized in the genetics and style of joint-stock limited liability defined by English common law. Yet, this long corporate history did not know the term ‘‘corporate governance’’ until 1993. This emerged after a series of corporate scandals that had plagued during the initial phase of economic liberalization. In one was a massive peddling fraud, which came to limelight in April 1992, involving several banks and causing the market to crash for the first time since liberalization in 1991. The second was the sudden surge in cases of MNCs consolidating ownership through preferential equity allotments at significant discounts to market price to their controlling group. The Third Scandal Was the 1993-1994 Vanishing Companies Over the period from July 1993 until September 1994, the stock index surged 120 per cent. Widespread dot-com take overs were fuelled at this time by the public issues of hundreds of obscure companies at large share premia backed up by sales talk from obscure investment banks and prospectuses which masqueraded as real with statistical curves that would have better served a manufacturers catalogue. The big wigs running these companies siphoned off the cash, and millions of small investors were left holding illiquid shares in crap companies. This destroyed the faith of investors, and decimated the primary market for 6 years. It was these three episodes which put ‘‘corporate governance’’ high

on the agenda of the financial press, banks and other financial institutions, mutual funds, shareholders, some of the business associations with a more enlightened approach to corporate behaviour, regulatory agencies and government. It is important to note that the corporate governance movement did not coincide with a national or regional macroeconomic and financial meltdown as it occurred in South-east and East Asia. Actually, India came unchoolthed by the Asian crisis. The lessons on the need for better governance and improved financial and non-financial disclosures were well before the Thai baht started nose diving in June 1997. Corporate Governance Committee Kumar Mangalam Birla committee The first initiative was the establishment of the Corporate Governance Committee headed by none other than Kumar Manglam Birla who brought forward recommendations which were ratified at a later stage and then became necessary for all listed companies[2]. Clause 49 of the Listing Agreement is based upon recommendations of a committee set up in December 1999. Naresh Chandra Committee Further, the company affairs department of Government of India constituted a nine-member committee under chairmanship of Mr. Naresh Chandra, former Indian ambassador to U.S. to address various issues on corporate governance[3]. Narayan Murthy committee SEBI fitted a committee (Mr. Narayan Murthy) in 2004 which supplied improvements in Corporate Governance. Through clause 49 of the listing agreement, SEBI has already included many recommendations suggested by the Narayan Murthy committee report on corporate governance. With these requirements in place, increasing number of listed companies have started to become alive to the need for transparency and good governance — both to draw foreign capital as well as domestic capital[4]. More and more chief executive officers realize that intricate cross-holdings, murky financial disclosures, rubber-stamp boards and less than adequate interest in minority shareholders is a recipe for capital market exclusion. The corporate governance code put forth by the Confederation of

Indian Industry (CII) is designed similar to the guidelines of the Cadbury Committee (Cadbury, 1992) in UK[5]. Interest prompted the establishment of committees by the CII, ASSOCHAM and SEBI to suggest measures in respect of corporate governance. It aimed at formulating and recommending a code for corporate governance for adoption by Indian companies, both in the private as well as public sector banks or financial institution or any other entity which is a body corporate.

SEBI's Enforcement Mechanisms

Over the years since its inception in 1992, SEBI has initiated several measures and constituted several committees to draft amendments to Clause 35B and 49 of the listing agreement in order to promote better corporate governance. For instance, the SEBI plays a part in making corporate governance standards and provisions through two examples i.e. Clause 35B and Clause 49 of the listing agreement, as mentioned here. SEBI Guidelines and Recommendations for good corporate governance as per Clauses 35B and 49 of the listing agreement: Since its inception, SEBI has been working on aligning Indian corporate governance practices to international standards prevalent in advanced countries. This is a more potent and stringent Governance against the stakeholder interests through the latest amendments to Clauses 35B and 49 of the listing agreement. Clause 49 of Listing Agreement has been amended in line with 2013 Companies Act As per a clarification from SEBI, from now onwards, even firms not listed will also come under this bracket where as of now only the listed corporations are under it.

Clause 35B

Under the new clause 35B, it will require the issuer to provide shareholders with a choice of casting their votes electronically or by postal ballot for any resolutions proposed by members that need to be voted on at general meetings. Meeting notices are also to be sent via the means of registered mail, registered email or courier to all members and the

auditors of the business as well as other directors and they must also be posted on his website by the company[6]. The notice of the matter shall indicate that the company provides members with voting by way of postal ballot and electronic ballot.

Clause 49 and sub-clauses

Corporate Governance Principles [hereinafter Clause 49(i)] Corporate Responsibility The standards set out in the draft amendment to Listing Agreement Clause 49are certainly largely consistent with the corporate governance standards set out under the New Companies Act, 20132013 New Companies Act. Again, this provision addresses compliance with these standards by all companies listed. In addition to corporations as contemplated in proposed modified paragraph (g), other specified entities that are bodies corporate or act under the authority of statutory instruments are included within the ambit of this proposed modified paragraph (i.e. banks, financial institutions, insurance companies, etc.). The corporate governance norms compliances were modified under 11 subclasses of clause 49.

Corporate governance principles [clause 49 (i)]

Finally, in this segment SEBI describes and defines the responsibilities of board, it prescribes various responsibilities of corporates relating to protection of stakeholders' interest and lastly lists the rights which shall be exercised by shareholders & other stakeholder group. This means disclosures need to be clear and ahead of any applicable accounting standards, de facto financial or non-financial. Clause 49 (ii) – Board of **Directors**

This sub-clause contains the composition of board, presence of independent director restrictions, term of independent directors and corporate code of conduct and whistle-blowing policy.

Board Composition:

This sub-clause specifies that the Board of Directors composition must ideally comprise at least one woman director

and atleast 50% non-executive directors. Again, if the Chairman is an executive director, at least 50% of the board be independent. If the chairman is a non-executive director, then 1/3 of the board must be independent directors[7].

Clause 49(iii): Audit committee

This replaced provision provides that the audit committee shall be composed of no less than three members, all or at least two-thirds of the body being independent directors. All members should be financially literate, and at least one member must hold a degree in accounting or another area of financial management. Such committee shall meet at least four times a year with no more than a four-month gap between meetings. This amendment defines the authority, role and responsibilities of members of audit committees.

Nomination and Remuneration committee [clause49 (iv)]

The nomination and remuneration committee shall have at least three members, one-half of whom shall be independent directors and all the members of the committee non-executive directors. The role of the Committee involves developing criteria for evaluation of Independent directors, formulating policies on board diversity, searching prospective directors and senior management based on above-mentioned standards and recommending to the Board remuneration policy for directors and other employees including key managerial personnel.

Sub-Companies Requirements [Clause 49 (v)]

This sub-clause prescribes obligations of the subsidiary companies to a holding company that is listed whether such subsidiary be listed or unlisted. It refers to (a) enabling certain holders of the majority portion of the board of directors of Indian subsidiary companies that are ultimately unlisted, according to which at least one independent director on the Board of Directors must be a nominee oversight watchman for overall listed holding firms, and; (b) complying with an audit committee examination of its maternal or individual statements concerning funds from profit raising clauses connected even

indirectly called the promise proceeding with declarations regarding segments known only by their names.

Risk Management [Clause 49 (vi)]

Under this clause by SEBI it requires that the BODs of top 100 businesses by market capitalisation (based on; here) shall arise through to set up risk management committee, its role and obligations and assign authority as they deem fit. This committee will consist of Board members per SEBI standards. Members of the committee may be senior executives, although the chairman needs to also be a board member.

Related party transactions [Clause 49 (vii)]

Consequently, the companies need to provide the audit committee with a periodic summary of all related party transactions.

Disclosure Norms [Clause 49 (viii)]

This would be the most stringent disclosure requirement ever to be proposed as an amendment to Article 49 of the listing agreement. The amended provision states that a quarterly report containing all material facts pertaining to the transactions of the parties, and a compliance report on corporate governance shall be placed on the company's website prior to photocopy of such development being circulated or published. Further refreshing the earlier statement, the yearly report will comprise plans of accounting treatment change utilized in financial statements, directors' remuneration and directors' association to the company.

CEO & CFO Certification [Clause 49 (ix)]

Such sub clause tightens the liabilities and obligations of the Board of Directors, the Chief Executive Officer, and the Chief Financial Officer. They have to verify that they have reviewed the financial reports and the cash flow statements, as far as their knowledge extends. Then, they must ensure that to the best of their knowledge, the Company has not made any transactions in breach of code or fraudulent activity undertaken at the Company level. Again, they will need to inform the auditors and audit committee if, during this third quarter

period, they become aware of any material changes in internal control over financial reporting, any changes in accounting principles or instances of material fraud.

Compliance Certificate reg Corporate Governance [clause 49 (x) and (xi)]

As per the amended clause 49 of listing agreement, SEBI also needs corporations to get the Compliance Certificate on Corporate Governance from the auditor of the Company or Practicing Company Secretary other than auditors. This certificate will form part of a separate component of the annual report. Besides the Annual Report, a Certificate is to be submitted also at the stock exchange.

Conclusion

Despite being a relatively new organisation, its success in discharging the role of regulator particularly enhancing the protection of multiple interest groups associated with capital markets and increasing participation in capital formation activities is commendable. SEBI has intervened where it was required to uphold honest trading as well as protection of the investors. Thus, SEBI plays an important role in compliance with corporate governance. Shareholders associated with a company practicing good corporate governance are much more confident. Active and independent board directors positively influence share price as they are more likely to enhance a companys reputation on the financial market. Corporate governance is an important consideration for international institutional investors when deciding which firm to invest in. SEBI's amendments also stood out in other creative ways by how it balanced the need for proper tooled statutory and regulatory reforms to deploy businesses at scale, and desirably better enable foreign investment. These rules and regulations are certain measures to enhance shareholder participation in decision-making, transparency in corporate governance, which results in protecting the interest of society and shareholders. Corporate governance, apart from protecting the interest of management, protects and promotes the interests of

stakeholders such as shareholders, debenture holders, creditors, employees and workers; thus it contributes towards increasing economic development in India amongst other under developed economies of this worlds.

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Role of Assessing and Identifying Hindsight Bias in Patents in India

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Abstract

The Paper examines the role of hindsight bias in the Patent registration process and suggest for its incorporation as a principle of equity to streamline and economise the administrative and executive aspects of registrations. The Paper appreciates the position that hindsight bias, a cognitive phenomenon where individuals see past events as having been predictable, has significant implications for the persons skilled in the art for the industry to which the invention or the application, as the case may be, belongs to. The Paper advocates that by recognizing and integrating effective de-biasing strategies, a rather robust and efficient patenting regime can be adopted. The Paper draws parallels with the well-established de-biasing strategies utilized in the United States of America. These strategies include adopting a cautionary regime at the time of registration of the Patent itself, in order to ensure cost saving and better decision-making at the time of oppositions or revocations being adopted as a legal remedy. The Paper aims to provide a comprehensive framework for policymakers to adopt these measures, ensuring a more objective and fair patent registration process in India.

keywords: Application for Patent ● Hindsight Bias ● Patent Act, 1970 ● Person Skilled in the Art ● Prior Publication

Statement of Research Problem

The unparalleled contribution that the need for establishing a robust mechanism for innovation and invention

is undoubted. The Law of Patents rests on the premise that the registration has to be viewed in a rather sacrosanct and rigorous manner, to ensure that the registrations are granted to inventions and which are new and novel. The principle which permits the same is the principle of "Prior Publication", which relies on the question "has this been done before?". The patent which is covered by way of the Prior Publication is precluded from patentability.

The current regime of Patent protection, along with the application of Prior Publication relies on the judicial wit and discretion. The current determination system does not, at any stage, appreciate the state of art as actually existing on the date at which the application for the invention is sought. The same leads to an incorrect interpretation of the principles concerning Prior Publication, especially in light of the presence of the cognitive and subconscious hindsight bias while determining the state of art *existing at the time of the application of the invention*.

Hence, this study aims to enable the office of Controller of Patents and Designs and other judicial offices to better appreciate the law laid down on Prior Publication by various judicial pronouncements, and enable a more astute and reliable Intellectual Property system.

Research Objective

The Research Objective for the Paper is as follows:

To determine the applicability of hindsight bias in Patent Litigation and Registration

Research Methodology

The study in the Paper is based on a *Doctrinal Study* of the secondary sources which range from Journal Articles, Books and myriads of cases which have developed the Law of Prior Publication in India. The nature of study concerns the appreciation of the manner in which the Law on Prior Publication has to be appreciated while determining the registrability of the patent in India.

Further, the Paper also explores the development of the Patenting Regime in India, by way of the reference to the *Primary Sources* such as the website of Intellectual Property India's website and the Law Commission of India's reports, in order to gain understanding of the administrative intent while implementing the laws.

Introduction

The rationale behind providing the protections under the Intellectual Property Rights rests upon the requirement of ensuring that the incentives in the industries remain intact so as to enable the industries to continue the development of the infrastructure, while also engaging in robust inventions[1]. The Intellectual Property Rights provide for the set-up which can help in enabling the incentivisation of innovation and invention, which can increase the returns of the inventors substantially. The current regime of the Intellectual Property Rights protections relies heavily upon the International Development and commitments entered into by India[2]. The International Conventions which have paved the way for the current regime of Intellectual Property Rights protection in India include the Paris Convention on Protection of Industrial Property, 1883 (hereinafter referred to as "Paris Convention"), the Trade-related Aspects of Intellectual property Rights Agreement (hereinafter referred to as "TRIPS Agreement"), 1995, among others[3].

The regime brought about by the Paris Convention and the TRIPS Agreement led to substantial changes in the current Patents and Designs Law in India[4]. Further, the substantial amendment made to the Patents Act, 1970 (hereinafter referred to as "Patents Act"), made by way of the Patents Amendment Act, 2005, came to be introduced in the backdrop of the compliance of TRIPS Agreement[5]. In light of the requirement of incorporation of the TRIPS Agreement into the domestic legislation, India adopted the requirement for providing product and process patents[6] for all the industries[7]. Similarly, the scheme of the TRIPS Agreement was incorporated into

many other domestic legislations[8], which provide for the protections to the Intellectual Property Rights in India, such as the Designs Act, 2000 (in order to protect the Industrial Designs), the Protection of Plant Varieties and Farmers' Rights Act, 2001 (in order to provide *sui generis* protection to the plants and varieties, along with the farmers), Semiconductor Integrated Circuits Layout-Designs Act, 2000 (in order to provide protection to Layout Designs of Integrated Circuits), among others[9].

Registration Process

The Chapter III of the Patents Act, 1970 contains the application process for the registration of the grant of the patent for the invention of the applicant. Furthermore, the process entails the filling of the application for the patent in accordance with the Patent Rules, 2003[10]. The procedure for the registration of the patent culminates into a complex analysis of the prior art which is done at the stage of publication which takes place prior to the grant[11]. The publication which occurs at this stage provides the details of the application[12]. The publication also takes place keeping into consideration the claims and the complete specifications which are filed for the purposes of the application.

The registration process for filing of the Patent follows a comprehensive process whereby the process aims at ensuring that the subject-matter exclusions under the Patent Act, 2000 are followed succinctly and do not lead to any kind of violations[13]. Further, it is important for ensuring and maintaining the sanctity of the Patent Grants that the patents which are granted are not granted in defiance of the rules of the patenting system[14]. Furthermore, the reason for ensuring a proper system for the registration is to ensure that the chances and the logistical involvement while analysing the patents at the later stage are to minimum intrusions. It has to be noted that the registration process entails a comprehensive analysis of the "invention" for which the patent has been applied for, by the applicant[15].

The registration process requires for the patent to be granted after the conduct of the prior art search. The requirement of doing a succinct and comprehensive prior art search is to ensure that the requirement of novelty, along with the other requirements of the standard of patents, are fulfilled[16]. The requirement of a comprehensive prior art search is essential to ensure that the patent claimed in the patent application is not prejudiced by prior art by use or publication. The prior art search requires for the determination that "at the time of the invention", there exists no prior art which has been present by way of use or way of publication, in the public domain[17]. It has to be ensured that the patent in the application is not prejudiced by the publication, and the determination of the prior art whereby the person having ordinary skill in the art should not be able to anticipate the art as "obvious" and not be able to reproduce or make the patented invention without the need for further experimentation[18].

Further, the requirement of obtaining patent is also in ensuring that the patent claimed in the invention is not "obvious" to a person skilled in the art. The standard requires for the patent applicant to satisfy that the novelty and the inventive step involved in the application could not have been anticipated by way of the obviousness by the person who possesses knowledge in the relevant field.

Prior Publication: A Sine Qua non for Patentability

The concept of "prior publication" is a crucial determination of invention. The determination of "prior publication" is essential to ensure that the embargo of anticipation and prior publication by use or publication of the invention is not satisfied[19]. The determination of "prior publication" has a huge bearing into the patenting system for the reason that the same can frustrate the invention claimed in the patent. In case if it comes to the determination that the invention claimed in the patent application has been priorly published in India or anywhere in the world, the patent claimed

in the invention cannot be granted patent, since the standard of novelty gets frustrated.

The concept of "prior publication" has found its relevance and presence in the Patents Act, 1970 in the ascertainment insofar as the standard of patenting is concerned. As per the scheme of the Act, the ascertainment and determination of the factum of the publication and anticipation of the invention is essential[20]. Further, the ground of prior publication can also be invoked while filing for opposition for the invention[21] and during the stage of applying for the revocation of the patent of the inventor before the Hon'ble High Court of the concerned jurisdiction[22].

Further, the degree and extent to which the principle of "prior publication" has formed the centre of multiple judicial interpretations. The basic principle which rests that the determinations and the degree differ in the mere registrations of the patent and the publications. It has to be noted that the mere registration of the patent differentiates from the manner in which the "publication" has to be determined. In order for a kind of publication to qualify as "prior publication", the patented invention should have published in use or publication in such a manner that the person having skill in the art can follow the instructions or create the patented invention again, without the need for employing any further need of experimentation[23].

The determination of "prior publication" is usually done at the stage of analysis of prior art. The degree and manner of publication or such "priorly published" material is analysed on the basis of the prior art found while conducting the prior art search[24]. Thereby, the principle of prior publication is much more robust and comprehensive, and requires a higher degree of qualification and embargo than the mere requirement of registration of the patent.

Hindsight Bias: An Option for the Inventor to Frustrate Challenge

The principle of hindsight bias finds its origin in the psychological effect that the knowledge of *ex post facto* inventions has on the persons who are the persons skilled in the art. The concept of hindsight bias plagues patenting and the registration process, since the incorrect ascertainment of the status of prior publication can cause unfair prejudice to the applicant and/or the inventor, as the case may be[25]. The prejudice caused to the applicant concerns the denial of the registration of the applicant on the ground of anticipation, and lack of novelty and/or inventive step. Similarly, the prejudice caused to the inventor concerns the unfair and irrational determination of the "prior publication", as provided u/s. 63 of the Patents Act, 1970[26].

The principle of hindsight bias can be understood to be the observational gap and assertive understanding that the "prior publication" as claimed to have frustrated the application or invention shall be published *as on the date of the application,* and should not be present after the application has been filed or the application for the invention was filed[27]. The exposure of the person skilled in the art to the inventions after the grant of the patent to the invention, and/or the time at which the application was filed, can affect the determination of the priorly published literature[28]. The same has to be understood with caution, especially in the conditions wherein the publication is claimed to be by way of the publication of literature in any scientific journal or otherwise.

Further, the central focus of the determination of prior publication is such that the person skilled in the art shall be able to reproduce the patent and imagine the same in his mind's eye, and without any need for any further experimentation, as held in the case of Hills v. Evans and Rosedale Associated Manufacturers Ltd. v. Airflix Ltd.[29]

Thus, insofar as the determination of prior publication is concerned, the judicial interpretations have caused for the cautionary consideration of ensuring that hindsight bias does not cause any unfair prejudice. The principle has led to a major

development in the case of Pope Appliance Corporation v. Spanish River Pulp and Paper Mills Ltd.[30], wherein the Supreme Court of Canada had succinctly recognised the extent to which the hindsight bias can affect the inventions and the patenting. Furthermore, the United States of America has adopted the principle of hindsight bias, and caused for major changes in the guidelines for examination and patent determinations of the United States Patent and Trademark Office (USPTO) as well[31]. The concept of hindsight bias was brought to the forefront in the American Patent Regime by way of the judicial intervention and appreciation in the case of KSR International Company v. Teleflex Inc. et. al. Further, the efforts of the USPTO in the appreciation of the bias along with the similar tests is aggravated and exacerbated due to the administrative and technical role it possesses, while encouraging the adoption of a rather adversial system of patent grant[32].

The application of the mention of the hindsight bias can be observed in the Indian Patenting Regime as well. The judicial precedents such as Alimentary Health Limited v. Controller of Patents and Designs[33] and Mahesh Gupta v. Assistant Controller of Patents and Designs[34] have observed the cursory mention of the bias and the cautionary thread which should follow the appreciation of the principle of prior publication, however the judgements do not touch upon the requirement of ascertainment of the degree at the stage of the registration itself. The judgements have rather made an attempt of enumerating the consequence of invoking such a defence[35]. The same goes to vain since the judgement does not appreciate the bearing which the bias can have on the registration and the revocation proceedings of the applicant or inventor, as the case may be. Further, the judgement only appreciates the presence of the bias at the stage of revocation proceedings before the Hon'ble High Court or at the appellate stage, but does not mention the manner in which the same could be mitigated.

Conclusion:

In a nutshell, the determination of the prior publication depends heavily upon the manner in which the art which *exists as on the date of application*. Further, the patenting regime in India can partake and adopt the mechanism which exists in the context of ascertainment of the hindsight bias. The hindsight bias can be mitigated in a manner that the de-biasing strategies can be applied without much resistance and friction on part of the administrative and executive agencies, such as the Office of Controller of Patents and Design and the Patent Examiners. Further, in order to draw references to the manner which the de-biasing strategies can be applied, a reference can be made to de-biasing strategies as have been applied in the United States Patent and Trademark Office (USPTO), which includes applying the de-biasing strategies onto the jury members in different proceedings. Further, the de-biasing startey seeks to apply to multiple different proceedings and suits, such as criminal proceedings, and civil proceedings, including the Intellectual Property litigations.

Further, implementing the steps of requirement of a detailed record to be provided for the considerations based on the hindsight bias and the prior art available at the *time of the registration*, a stricter and restrictive consideration of obviousness, while balancing the subject-matter exclusions u/s. 3 of the Patent Act, 1970, requirement for recording the reasons for the frustration on the grounds of "prior publication" and seeking opinion and evidences of experts or the "person skilled in art" in order to ascertain the prior publication can help in mitigating the biases. Further, a resort can also be made at ensuring that the judges and the examiners, along with the office of the Controller, are made aware of the presence of the bias. The Patent Manual issued by the Indian Patent Office can be made to include the conscious presence and consideration of the bias to be present, so as to enable an institutionalised recognition of the bias into the patenting regime of the country. Further, aid from the scientific advisors

and scientific and mechanic expert can also be taken so as to help the judges and the examiner, along with the office of Controllers analyse the prior art in the sense as envisaged by the Patent Law. The requirement of ensuring implementation of the strategies of de-biasing is essential due to the probability of the prejudice which can follow a decision which is plagued with hindsight biases, especially while determining the status of one of the most revered properties of a natural and juridical person, in the Indian and global development market.

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Copyright in Indian Films: Inspiration VS Copy

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Abstract:

This research paper discusses the intricacies of copyright problems in Indian film industry, from the thin line between imitation and originality. Indian cinema has always had a legacy of lifting worldwide stories, oscillating between the fine line of artistic inspiration and copyright violation. In this article, we explore the provisions of Copyright Act 1957 and relevant International treaties to analyze why it is so difficult to protect copyrights in an industry that is evolving at such a rapid phase. This study seeks to establish these legal, ethical and creative divides between inspiration versus imitation, through deep-dive analysis of key high-profile cases of alleged copying in Indian films. Additionally, it explores how these problems affect the creativity of art and the moral dilemmas artists face when appropriating material. The paper ends with suggestions for making copyright laws more robust and by also balancing structure between originality protection and cultural exchanges in Indian cinema.

Keywords: Inspiration, copyright, Pan India, Box-Office, Copy, Indian Cinema, Copyright Act, 1957, Filmmakers

Statement of Problem:

In an era driven by entertainment, there's a high demand for filmmakers to satisfy audiences with engaging content and exciting movies. In light of this, the filmmakers tend to appeal to global audience and amidst this, they craft their screenplay inspiring from popular movies. The problem arises when the

line between inspiration and imitation blurs and often results into copyright infringement. The intricacies involved in identifying the infringement is hurdled with limited legislation and proper awareness amongst the stakeholders.

Research Objective:

This research paper aims to highlight the thin line between inspiration and infringement in the film industry in India, specifically from the perspective of copyright law. This study intends to clarify the thin line between creative inspiration and copyright infringement, as Indian filmmakers draw from both domestic and international works. The next section focuses on the frameworks enabling copyright in India, such as Copyright Act, 1957 and international treaties governing it. A qualitative analysis of case studies alleging copying post-production, this research aims to attempt to identify the legal reasoning and standards applied by Indian courts in differentiating between lifting vs inspiration. Also, this paper intends to deliberate on the gaps in the ethical aspect of copyright in Indian cinema and how different models of revenue-sharing should be followed as and when adaptations or remakes find themselves on screen. It aims to provide insights that may complement efforts in informing a balanced regime of artistic licence and copyright protection within the realm of filmmaking in India thereby, ultimately existing as an aid to demystifying the limits placed on creativity by copyright.

Research Methodology:

I have employed doctrinal method of research. I have relied on case laws, statutes, research papers, academic journals and academic websites to showcase the existing state-of-affairs in this research area to understand the complexities of copyright issues within the Indian film industry and address the research problem of this paper.

Introduction:

Indian film industry is hardest hit and the most booming industry in India where people are always affected or

encouraging it. Also in this modern day and with more cinema knowledge, people celebrate a few stars top movies which got released & enjoy each good movie much rather than previous best to be watched movies. People learn through experience many things about how to receive a movie and know better than any critic what they want to see. Like so many old movies (comes around 2000s), provides plenty of feel-good movie but rejected and stablished, but now, via OTT platforms, welcome for any new movies warmheartedly + Back on any utterances made in film-makers. So even for few people movie problem was known! Since Raja Harishchandra, the first full-length feature in India released in 1913, Indian cinema has undergone unprecedented transformation. It has evolved from those humble beginnings into an international giant and its mass producing of films every year rivals every other nation by far, as well as gaining both domestic centre stage praise and global critical acclaim for itself. While the Indian film industry is commonly known by its Bollywood label, it also encompasses Tollywood and Kollywood of many more. Well, it was Indian cinema and cricket which prospered from other things too — the huge captive audience hungry for cinema and with an innate cinephilia, then came multiplexes in a big way and now we have digitals. As a result, Indian cinema found its feet while being exposed to the utmost diversity of cultural influences — from Western Cinemas to Indian mythologies which made for a rather eclectic range of narrative styles. Also, through this period Indian cinema is being much more open to international glare and as such copyright and originality issues have come into the forefront of the post-liberalization years. With Indian films crossing borders, new challenges and responsibilities with respect to the threshold issues of intellectual property rights pertaining to imaginations within the bounds of inspiration versus infringement have come into view.

This cinema has also had a fiercely vibrant and multi-facetted output which has absorbed both international and local

ethnic traditions of folklore, litterateur, etc. to form an expanse or ethos characterised by cross-cultural movement. On the other hand, while such movement inspires an argument of contours of industry — inspiration or imitating. One law that was immensely important in shielding creative work from being duplicated without authorization: Copyright law to protect the intellectual property and pave the way for healthy motivation towards generating ideas. This leads to the challenge central to this study: identifying which works are "inspired" and which breach existing work. "Inspired" means the film was inspired by old films, "copying" is that the amount of copying has become illegal. In general creative work and specifically cinema, literature and art, a very fine yet crucial line exists between inspiration and plagiarizing This word means writing inspired from a work, so extracting ideas/theme/stylistic element without cloning it. The process typically includes some degree of creative interpretation or reimagination of elements, resulting in an original output that demonstrates but does not reproduce the source. A director may want to create only the movie of a specific genre, storyline, or aesthetic but instead end up making something that expresses and displays effectively antithetical desires. On the contrary, to copy means an unauthorized replication (or a near-reproduction) of someone else's creative work without any originality that may be copyright infringement. Thus, copyright violation is to copy another person's content work or a large part of the structure and form so as to weaken the original creator's copyright or exclusive right over such work. So where does inspiration end and copying begin, according to the threshold of similarities/objective similarity test in case law? Inspiration honours the original by constructing creatively upon it but copying shuffles across into infringement via a reproduction of things contained therein which have either not been transformed sufficiently or governmentally permitted.

This fine line is regulated under the Copyright Act, 1957 which serves as the primal statute for copyright in India along with International Treaties such as Berne convention. But it is extremely difficult to enforce such laws in a culture where this practice of adaptation and remakes as an accepted industrial practice. It sheds lights on Copyright implications in Indian Cinema with the Legal & ethical considerations and Creative effects. So this will add to deeper insight into how this industry strikes equilibrium between origin and exchange.

Copyright Law and Film in India:

The Copyright Law in India, governed by the Copyright Act, 1957, protects and promotes Indian films as creative works. The film is created using a cinematograph, with the producer being the sole author. The film requires multiple individuals, including actors, directors, producers, music composers, and screenwriters. However, there is debate over whether copyright legislation favors producers, as they have the exclusive right to the film's music and script. The question remains whether the law favors producers.

Copyrights are essential for filmmakers to protect their creative works and prevent others from stealing their work. They can reproduce, telecast, display, distribute copies, publicly perform, and make derivative works of their films. For instance, a film director wanting to make a movie of a novel must obtain the rights from the author, who wrote and invented the story. For instance, in the Kollywood Tamil Film Industry, a film based on a 1955 novel, "Ponniyan Selvan," was produced for 75 years[1]. The film was inspired by the novel's success but faced budget constraints. The film must have obtained the rights from the author and given credit to them. Copyrights are vital to the Indian film industry, which boosts the country's economy. The Indian film industry relies heavily on copyrights to protect artistic and literary creations. When a person registers their copyright, they gain ownership rights to their original creative works. For example, a filmmaker with a copyright contract under the Copyright Act

1957 receives ownership rights and several privileges from the registrar.

Inspiration vs. Copy: Where to Draw the Line?

Copyrights have become more widespread globally. Thus, it is no big surprise that a lot of innovative content makers wants to maintain their functions in all respects, for ethical and/or industrial reasons because of technological changes plus raising insight of copyright benefit. As with everything, new things create new challenges and copyright is no exception. Copyright infringement is one of these problems that not only costs creators money but also disregards the effort they put into creating. However, when we try to navigate the murky waters between copy infringement and copy inspiration it becomes a more muddied issue. And when the two are confused all the time there is no room for people having inspiration from other art and create something new. In fact, stealing ideas from another person's work is not always considered copyright infringement and according to the history of it in time, specific rules has been branched out on this matter. An artwork must TOUCH someone or anything. As a result, listing everything under one title could be disincentive to the producers, and an art block. For example in music, a tune can be made only on the seven swaras.

Copyright protects the expression, and not the ideas. If, for instance, two painters went out and painted the same scene in slightly different ways, neither would be infringing on the copyright of the other. But since the TV series Lost is under copyright, you are not forbidden from writing a novel about some folks who survive a plane crash and end up living on an isolated island.

The Copyright Act specifies when a copyright is infringed in section 51[2]. According to section 51 of the Act a copyright infringement is when someone engages in an act which only the copyright holder is entitled to do, absent permission from that holder. A natural or legal person that permits a place to be used for the transmission, sale,

distribution or the like of an infringing work unless he has no knowledge of it and is not aware of any circumstances which render his actions manifestly unlawful. Those copies will been pirated or no matter-hat kind of work u make harassed without copyright owners permission comes to criminal Act.

It is crucial to remember that Section 51(a)(ii)[3] requires that the individual "permitting for profit any place to be used" for the type of infringement listed therein must also engage in copyright infringement, unless he was not aware of it and had no good reason to suspect that he was. This can be explained by the fact that "permitting the place for profit" does not start with knowledge of anything, even the potential of copyright infringement.

Infringement is the antithesis of inspiration. As the makers clearly mention about their permission to adapt Forest in Grump, such films cannot be called copyright infringement just like Laal Singh Chaddha. Jugg Jugg Jeeyo producers were sued when the trailer of the movie was released. The content of the script allegedly written by the plaintiff was not at all similar to the film, said a High Court of Ranchi bench. It is clear from just this finding that a single attribute does not cause copyright infringement.

Inspiration is limited to one specific quality while the total saturation of anything is called infringement. Infringement crosses lines that should not be crossed between each other creators space. One of the tests for copyright infringement is known as the spectator test, and this looks to see whether a work has "more similarities than dissimilarities" so that it cannot be said that something occurred by chance or some significant copying took place etc. The dividing line is drawn based on the satisfaction or otherwise of various criteria laid down by the Apex Court. Now, you might say this line has a chronological nature to it but I disagree. Similar to what we have seen with various films where the original copyrighted work is presented in different ways. We must ensure that this type of presentation does not conform to the same mold.

Similar concepts and thematics can be delivered in a different way or convey an entirely different message.

Role of the Courts in Defining Inspiration vs. Copying

Courts serve a vital role in determining the line between inspiration and copying amidst the complicated legal framework that copyright law operates. In India, a country known for its film industry and the creative exchange it encourages, adaptations and cultural storytelling, courts have had to weigh in repeatedly on when a work infringes another's copyright vs. simply draws inspiration from it. The industry as a whole also has its creative practices affected by judicial decisions in this regard, which create the legal context of what copyright infringement means.

Usually, Indian courts determine infringement possibilities through what is known as the substantial similarity test (or so-called) which examines whether there are non-generic protectable aspects over and above themes or ideas. It is often this test that compares character traits, plotlines, dialogues and even visuals to see whether the similarities are merely thematic or go right into beat by beat replication.

In the proceedings with respect to the Bollywood film Partner, which was a scene by scene adaptation of Hollywood blockbuster Hitch, the court assessed particular stories and scenes to determine whether it had crossed inspiration lines or not[4]. Ultimately, this test assists the court in determining whether an average viewer would find substantial sameness between two works and thus identifying potential infringement. The Indian courts also rely on past cases to base the decisions taken in cases involving copyright infringement and more often than not, results based from previous judgments are harnessed to maintain consistency in judgment. These precedents have set the stage for a balance between protecting original creators and enabling a culture of creative borrowing, which respects IP boundaries.

In R.G. Anand v. Deluxe Films[5], a landmark case, the Supreme Court of India landmarked a judgment by holding

that only similarity in theme or general story line are not enough to substantiate infringement. The court pointed out that copyright infringement only exists when someone engages in extensive copying of particular details such as character names, dialogues or scenes word for word and this makes it clear how much creative freedom exists.

In Five Star Films Pvt. Ltd vs Thenandal Films[6], in this case, the suit has been filed against the defendant where the movie titled "Mersal" is infringement of "Moondru Mugam" where the story has similar to this exhibiting movie. The High Court of Madras,held that it is not an infringement because the story line is different from nature, not about the characters played.

This is another important aspect that the courts play when it comes to copyright infringement because if a court finds that someone copied your work, you are entitled to some type of damages. If a violation is established, the court can issue injunctions against further copying of the materials, impose monetary damages for any loss suffered or even civil and criminal penalties against an infringer. These remedies encourage limited respect for copyright protections while providing recourse to creators whose works were plagiarized.

Eventually, it is the interpretations and rulings of Indian courts that contour what constitutes copyright boundaries for the industry. They help filmmakers push the creative envelope whilst still respecting intellectual property rights through drawing a line between inspiration and infringement. The conduct of Indian courts will continue to play a seminal role with regard to legal originality and base line protections in respect of the film sector as the industry evolves onward with international partnerships.

Sweat of Brow and Modicum of Creativity

In copyright, the doctrines of Sweat of the Brow and Modicum of Creativity are two different standards that have been developed to determine if a work is deserving of protection.[7]

The Sweat of the Brow doctrine states that a work should be entitled to copyright protection based upon the level of effort, labor or resources expended producing it without necessarily meeting a minimum threshold of originality. This has traditionally been used in those places where effort itself is a valid ground of copyright protection, to cover the less inventive works that entail considerable labor. A collection or database that is the product of uncreative laborious gathering and implementing without creative choices may nevertheless be entitled to protection under the Sweat of the Brow standard.

On the contrary, the Modicum of Creativity doctrine states that copyright protection is only to be granted when works display some amount of creativity or originality. This approach, which is well-known in many jurisdictions including the United States, requires that a work include some degree of creative choices or expressiveness beyond just effort. This doctrine finds its footing in the belief that copyright should only extend to works that add something new to the creative landscape, and does not cover works based on current knowledge or merely labor-intensive works.

Indian Copyright Act, 1957 also interests towards to Modicum of Creativity standard which requires a minimal level of originality be shown for work to be protected. Indian courts have generally held that a minimal level of creativity is necessary for copyright, as seen in the landmark case Eastern Book Company v. D.B. Modak[8], where the apex court had held that copyright is not about whether effort and skill was involved in creation of a work but rather originality in creative expression. Such approach is in line with the global trend to regard originality higher than the per se effort, and ensures that copyright law only protects creative expressions of ideas, as opposed to compilations of facts.

Conclusion:

Balance between free-working nature of Indian cinema and Intellectual property protection This research also demonstrates that while the Copyright Act, 1957 provides a

much needed legal framework, it often blurs the lines between inspiration and copying given how this industry constantly feeds of both global and local sources. This line between inspiration and infringement is largely defined by the significant similarity test as applied in Indian courts, together with the doctrine of transformative use.

This study, as well as others surrounding creativity and infringement, brings the need to clarify legal structures on inspiration and infringement that has become ever more prevalent in our digital age where content is accessible at a far greater level than before with many patterns easily replicable. Standardizing definitions and criteria to distinguish between what is inspiration versus copying would enable filmmakers, producers, and legal professionals to make informed decisions on creative and commercial matters. Recognizing the need for well-resourced journalists, as well as consumers and artists alike to be aware of this apparent lack of financial recognition — a greater focus on education surrounding intellectual property rights could help create an environment within the film business that respects creativity but also acknowledges artistic borrowing where credit is rightly due.

Consider taking a few practical steps to make this framework even stronger! One, better public guidance or advisory boards within the industry would help creators ascertain where fair use and transformative work come into play. Secondly, industry-wide workshops or seminars teaching copyright law and principles of creative ethics would help to establish a common understanding – particularly if such discussions were to begin with the up-and-coming filmmakers. And finally, while Indian cinema shall keep on influencing and being influenced by the global content, embracing best practices of international copyright standards may help in striking a right balance that inspires creativity without stifling originality.

Basically the Indian cinema is very matured like many things it grow with time and also to cope up with copyright.

The research therefore highlights the need for a mechanism that safeguards creator rights whileallow enough space for an artist's reinterpretation. The path ahead, through clear and enforceable standards along with an enlightened creative community imbued with a sense of responsibility, can transform Indian cinema into a model for the rest of the world in upholding and nurturing IPR within its cinematic commerce

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Comprehensive Analysis of Violation of Rights of Victims of Child Sexual Abuse in India

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Abstract:

Child sexual abuse (CSA) is a vital social issue under the purview of law, which aims to protect children and ensure justice for victims. This paper seeks to analyse the existing legal provisions for child sexual abuse in India, especially those provided under the Protection of Children from Sexual Offences (POCSO) Act, 2012. Violation of the Rights of Children against Sexual Abuse The report contains detailed analysis on how these laws impact the child victims, their experiences during the reporting and legal processes and looks into the issue of underreporting as well. This paper will further examine the impact of mandatory reporting laws and include recommendations for improvement in child protection and restoration.

Key Words: Child sexual abuse, Violation of Rights, Victim, Sexual Act

Statement Of Problem:

In spite of the Protection of Children from Sexual Offences (POCSO) Act, 2012 addressing Child sex abuse (CSA), CSA in India continues to be complicated by the challenges presented as legal, social and psychological. The legal system frequently fails victims, and in many cases, violates their rights, which can cause underreporting of cases, negative labeling (especially in sexual assault), and a diminished trauma-informed response. It seeks to examine the

impact of existing legislation, explore the experiences of child survivors and identify factors detracting from justice. It also recommends strengthening of protections, support and access to justice for victims of CSA in India.

Research Objectives:

1. To Examine psychological, Social, and Legal impacts of Child Sexual abuse on Victims and propose recommendations for strengthening legal frameworks, Victim support systems, and protective policies in India
2. To Analyse the effectiveness of the Legal framework for the protection of children from child Sexual abuse and challenges faced by child victims in India, including issues of violation of rights, underreporting, and procedural limitations.

Research Methodology:

My study employs a qualitative research methodology involving legal and policy analyses, case studies, and studies, this study examines the POCSO Act 2012 and other laws on CSA to assess their synthesis towards achieving effectiveness in India. Legal Framework and important cases will be used to gain primary data, the secondary data includes literature reviews from credible sources. The data will be thematically analysed to highlight the Gaps in the legal framework for protection of Rights and children in India and try to suggest recommendations wherever possible that can contribute towards bridging these gaps and provide better protection and support to child victims.

Introduction:

According to the **WHO website,** "Child Sexual Abuse (CSA) is any sexual act directed against a child, and can be defined as an act that violates the physical or mental integrity of the child, usually perpetrated by someone in respect of whom there exists a relationship of trust or power". That CSA is also any sexual activity undertaken with a person under sixteen (with no evidence of truthful, informed consent).

"The Protection of Children from Sexual Offences (POCSO) Act, 2012 enacted by Govt of India provides safeguards for children against sexual abuse. The act defines a child as any person below the age of 18 years. The POCSO Act 2012 provides for the establishment of Special Courts to ensure speedy trial."[1]

As such, it includes a spectrum of abusive conduct and situations—many of which are also prohibited by law—all from the satisfaction of adult sexual desire at the cost of children's safety, innocence, and health. Implications of a Legal Definition Without a Clear Consensus on Meaning Perhaps the definition of child sexual abuse serves as both a benefit and dilemma — how it can help further research and ultimately studies, assessment practices appointments but also challenge us in terms. But strings of common words throughout definitions emphasize important components of abuse — the developmentally immature child, the dependence on adults, and a breach of trust or power.

This paper will analyse the role of law in the case of CSA more importantly, will suggest ways to improve the judicial process and victim support system. My Research is Limited to the Child Victims who went through Sexual abuse.

As per Definition of Child that is stated under National Commission for protection of Child Rights (NCPCR) and POCSO Act, Child means a person who falls under the age of 0- 18 Years[2].

Through an analysis of legal frameworks and processes, it aims to find examples of the best practices and potential areas for reform, including those laid down in the Protection of Children from Sexual Offences (POCSO) Act in India. It will also consider the psychological and social obstacles that child victims encounter in judicial proceedings, as well as solutions for improving their access and protection alongside the judicial process.

Factors Contributing to Child sexual abuse in India

Exact shapes of CSA (child sexual abuse) in India are horrifying with regard to the perpetrators and also who makes it a reality. Many times the abuser is someone known to the child like a trusted family member or close family friend giving easy access to children. It is not uncommon for cases to remain unreported, as family members come up in defence of the abuser in order to protect "family honour," an act that implies impunity and continues the vicious circle of abuse[3].

The sociocultural context is also important to understand CSA. Patriarchal societies not only place men in power over women but also enshrine entitlement to abuse, upheld by gender norms. Cultural taboos around talking about sexual abuse keep conversations from happening, and children do not know they are a victim or where to go for help[4].

Risk factors go beyond the family and into complicated social influences. There is evidence that boys who are abused as children go on to become abusers themselves when they grow up. Later CSA perpetration is also linked to environments that expose children to inappropriate behaviour or have inadequate supervision. Lack of support tends to bring unresolved trauma out.

Additionally, specific populations experience increased risk, including MSMs and at-risk youth. Older boys or figures of authority often present the coercion, with boys more commonly being raped by strangers and girls within their own networks. Even with all these numerous effects, CSA remains complex and multifactorial; it is not a clear-cut issue, as this shows that even the most privileged of people can end up being one part of CSAs due to their trauma in their past lives among other people. Community-based awareness generation, accountability of perpetrators, and gender-sensitive education are critical initiatives to help prevent CSA. Why is addressing gender inequity just not something we should do? Research proves that programs addressing adolescent boys with respect to gender norms lead to attitude change towards gender equality and also have a substantial effect in reducing

perpetration of violence. Anyway, these results have to be interpreted critically. The majority of current research is based on small samples and utilised a cross-sectional or qualitative methodology indicating that further studies in these areas are necessary. Cohort studies with longer term validation of MP factorising are essential for understanding how specific patterns of CSA change over time, as well as giving direction for prevention.

Violations of Rights of Victims of Child Sexual Abuse in India.

Impact of Child Sexual Abuse:

Child sexual exploitation causes immediate and long-lasting physical, emotional damage. It can lead to physical harm, STIs, unwanted pregnancies and PTSD for life — depression and rage and withdrawal and shame. It is also more traumatic due to social stigma and a culture of victim blaming that leads to family breakdowns and exclusion from society.

It extends from the victim to families and communities. It can cause mayhem and emotional and financial hardship on families, consequently causing desensitisation to violence to the general public and disintegration of trust in communities. This is social expense: the cost of hospitalization and the legal aid services; and it means continuing the vicious circle of abuse.

What it doesn't do, however, is restore their rights and heal from injustice but what it does achieve is giving the foundations of which to provide greater community support to victims than only treatment:

- Everything from trauma informed care: to counselling and therapy for victims to be able to process their abuse.
- Legal Support: Aid with legal representation and guarantee against injustice
- Community Support: Programs (social reintegration programs) designed to limit isolation and stigmatization
- Prevention and Awareness: To raise awareness to prevent abuse & promote Child rights

- Breaking the cycle, protecting children; ensuring they can grow-up with dignity will take a whole-of-society effort.

Right to Protection from Child Sexual Abuse in India

Legal Framework on Child Sexual Abuse

Under IPC(BSA) Currently, a girl who has been sexually assaulted can file an FIR for statutory rapeor 'outraging the modesty of the woman' (for girls) and for 'unnatural sexual offense' (for boys). By their nature, children cannot be sexually abused in a legal system whose underpinnings even so much as comprehend that regular criminal laws are utterly ineffectual in protecting child victims. Focusing these legislations not on common forms of child sexual abuse and its impact upon the child[5]

- Frequently this exercise of discretion which is enshrined within the ambit of 376 of IPC to inflict a demure sentence upon, the culprit has been at the cost of victims too many times over.
- For instance, in **Raju v State of Karnataka** [6]it was observed that since the two accused persons were twenty-four and twenty-one years old respectively, and a good number of years had passed during which they had faced disgrace, his sentence of seven more so rigorous imprisonment was reduced to three.
- In X vs State of NCT of Delhi, the child must be prepared to plan their own education and provided them with skills or which may help the victim earn a living role to work in a job.
- In Hanumantha Mogaveera vs State of Karnataka, the court stated that a separate unit has to be created for 'protecting child victim' and 'the basic medical facilities should be provided whenever necessary', children must be referred to private Hospital and it is the responsibility of the state to bear all expenses for rehabilitation.
- Contextual Backgrounds for Both Lack of Reporting and Sexual Abuse:

In one 1987 case, an eleven-year-old has been raped as she struggled to hold down the ground and had her mouth taped shut. THE accused was sentenced to five years' imprisonment by a session court. Madhya Pradesh High Court, to increase the sentence had observed that just because such offences of personal violence are increasing in society and though crime rate is rampant it would not justify awarding extreme penalty simply because a young offender has committed the crime. The terrifying reading of 'penetration' in the Explanation to Section 375 is one such example, especially in case of CSA. A sexual intercourse by a man with his own wife (the wife not being less than fifteen years of age) is treated, therefore, as not an offence under the Explanation to Section 375. The same logic holds true for Section 376-A[7].

- Not all Special Courts have actually been functional in the various States of the country for POCSO cases but even where they are functional, high pendency is still being reported as per information provided by High Courts so far and there appears to be a need to deliberate about it[8].
- The juvenile welfare boards to take up matters concerning child sexual abuse. The homes are referred to as observation homes established under the Juvenile Justice Act 1986 yet fail to provide special care, treatment and protection to victimized children. To be set up under the new Juvenile Justice (Care and Protection of Children) Act 2000
- Situation where you do not carefully record the testimony by child victim by police/judge/prosecutor/magistrate. An individual section with respect to the safe recording of statements of child victims is also required. It is not provided for at present

Right to Life and Personnel Liberty (Article 21): Kids who were abused should only be questioned by specialists. A language has been set by the legal system. Under the current regime, for most children, trauma is inflicted from disrupting

his natural environment. Each step of the system's indifference increases the trauma to the child victim. Many of these cases linger in the courts as the trial continues for years. In other cases, the girls had grown up before a final ruling was ever issued. Trial of sexual offences must be conducted within a stipulated time — investigation to be completed in two months and trial in four months from the date of receipt of report. They should establish designated courts.

- **POCSO Act:**

Consent: The POCSO Act does not say anything regarding the situation when a child or a teenager is reluctant to go through the medical examination but his/her family members or investigating officer wants differently. In such a case, the very first thing needs to be clarified——permission. But during an emergency, such as when the child needs to be kept alive, the preventive character of legality and consent must take a back seat.

- Medical examination: A female doctor, as per the POCSO Act's Section 27(2), has to check up the girl child or adolescent victim. The on duty medical officer, however, has a legal obligation to provide emergency medical aid. On the other hand, under Criminal Law Amendment Act and Section 166A of Indian Penal Code on-duty Government medical officer is to be examined in case of rape victim. If this legal conundrum wasn't opaque enough already, it's due to the unavailability of women doctors.
- Violation of right to provision of free medical care: Article 47 of the Constitution of India lays down a duty on the State to provide Free Medical care. By law, all survivors are entitled to **free medical care from the community and institution**. If counts are limited on amenities or post costly techniques the State should be liable otherwise hospital can present a compromised treatment and even deny complete care to survivors
- Consensual sexual activity: The POCSO Act, 2012 does not provide any exception to the imposition of sexual acts

on a person below 18 years and therefore applicable even between two adolescents or between an adolescent and an adult as it criminalizes all sexual activities including that which are consensual by misstating this proscription against minors notwithstanding other variables a) sex/gender b) marriage c) age-ringing in traditionally utilized defenses against sustaining charges under the special statute. The minimum penalty for any sexual act of mutual decision that could fall under this provision must be established as [nonoffence where the only people involved in the penetration are both] either of whom (with one or another below 16) he ok agree to participate in a sans penetration assault, and so that at these ages be able not detained about it than appropriate with completely, vente no pun intended POCSO Behaviour, 2012. The mental health professional as a sexually abusive parent case will rarely present themselves fully formed with egregious genital trauma. And that is when the role of mental health expert comes into play. What? Well – for the simple reason that this child in a court room interview is being prepped for trial. Survivors of child sexual abuse may experience both short-term and long-term detrimental impacts on their mental health.Mental health professionals should render individual counselling, family therapy and rehabilitation if psychiatric disorders develop later on victim should receive referral care.

- Reporting: Most of the time, child sexual abuse goes unreported, as you may have heard. Similarly, for many family members and survivors alike, pinpointing child sexual abuse — much less speaking out about it — is no easy task. This remorse brings not only shame and humiliation for survivors but also splashdown on family members, anger at their helplessness in this situation fostered by activism, annoyance with their incapability to aid and agony. And they say nothing because the last thing they want is to be a victim – again through doctors, the criminal justice system and members of Society who do not understand.

Since Article 15(3) of the Constitution of India allows for special protection to children, therefore such protective provisions for a child victim of sexual abuse is possible. The study reveals that the reason behind under reporting is due to the prolonged process as stated earlier and Due to the societal- cultural factors prevailing in society[9].

- The issue with the special courts is when the Crime has been committed by the own Family members or where the person is Closely Related to the Child There are several challenges for the judges of the special courts.[10] At that time the child may also be pregnant with that Accused. The question that need to be considered is whether the accused is married with the Child. There are some instances where the child is married to the accused so that the child remains underreporting of the crime.[11]
- It is nearly impossible for the police to detect a child victim. Police are informed about the commission of a crime only after the crime has been committed. Children are universally unaware that an offence has been committed upon them, and therefore also do not report the crime. Sometimes the FIR is filed, but there is no child produced in front of the court to record a statement. Example: In sexual offences children may not be able to name their body parts that the alleged perpetrator has sullied. As a consequence, the trial has totally collapsed. So the police should be with the child and he should feel comfortable to conduct an investigation.

Recommendations For the Protection of Children from Child Sexual Abuse in India

- Training: The authorities should immediately train all medical institutions, teaching Institutions, judicial, legal and law enforcement departments who are supposed to deal with the provisions of the POCSO Act, 2012. Fourth, and perhaps the most challenging, is the monitoring of information and public education. What is absent in any holistic approach to care and justice? Training all stakeholders. The training of medical students and primary care physicians who treat

children should therefore also be conducted urgently in the areas of age-appropriate interviewing, systematic assessments, evidence collection and HIV STD prophylaxis, family counselling, and routine follow-up.

- Hence, the authors recommend that further specific provisions on medical examination of child victims be included. If the case involves sexual assault, then murder of the assaulted child is not a full evidence due to absence of detailed medical report. The victim needs to be psychologically treated, meaning the work on their mental health has to take place because trauma needs to be lowered. The unseen but obvious truth, however, is that all less exposure to the courtroom for the child and therapy availability for traumatized children leads to more complete evidence.
- Article 41 of Constitution of India: The right to work, to education and the right to public assistance in certain cases is a fundamental duty of the State as enshrined by Article 41 in Part IV (inserted by 42nd Amendment Act) The State, shall as far as it is able, provide for securing just and humane conditions of work, maternity relief, education and public assistance in case of unemployment, old age sickness and disablement. So, the responsibility of providing service will be with the state after having gone through all this trauma for a victim and also arrange on it to provide an incentive to lead their Life again.
- Police should be trained about Child Sexual abuse so that he/ she can be ready to initiate the action as soon as they are reached and to carry on the process of investigation of the case of child sexual offense in necessary cases. Police while conducting the examination should consider themselves that they make Comfortablety on the side of child and not to pull the child more into intrusive Trauma.
- Juvenile Justice (Care and Protection Act) also commission should establish a juvenile Police in such way that it cover all the District and City areas with continuous Monitoring and the cases need to be considered. This unit has

to be additionally headed by a Superintendent of Police Officer and should contain two additional officers consisting area of expertise in that field

Conclusion:

In conclusion, In recent years, Child sexual abuse issues have been rising at an alarming rate, and the factors that are causing child sexual abuse have to be taken in seriously note CSA is a multifaceted crisis in India that needs more than just the law — it needs sharper punishment for offenders, greater awareness among people and society at large working towards putting up a robust system of protection against child sexual abuse while also rejecting any consciousness that promotes such predators under the disguise of gender norms.

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Rehabilitation and Medical Care for Drug Addicts: Gaps and Challenges in India

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Abstract:

India faces multiple structural barriers in its drug addiction rehabilitation and medical care because it lacks enough treatment centres while such services remain separated from one another and society holds negative attitudes toward addiction and the country still applies outdated punitive methods. The Narcotic Drugs and Psychotropic Substances (NDPS) Act from 1985 has led courts to transform their drug policy from punishing drug offenders to providing treatment instead of penalties. Landmark judgments such as Toofan singh and Baldev singh demonstrates its dedication to promoting rehabilitation over punitive measures shows judiciary view on drug addicts. De-addiction programs face structural problems because they mostly use abstinence methods when evidence shows medication-assisted therapy (MAT) should be used instead. Research against international drug policies confirms that India needs to develop combined legal and medical systems for managing drug addiction effectively. The research evaluates judicial transformations and policy failures and proposes rehabilitative transformations for Indian substance misuse management.

1.1 Introduction:

Rehabilitation and medical care for drug addicts in India face significant challenges due to inadequate access to treatment, societal stigma, lack of integration between

healthcare services, insufficient training of healthcare professionals and ineffective policy implementation. Individuals with substance use disorders face problems obtaining specialized treatment because there are too few rehabilitation centers and treatment is expensive and non-uniformly distributed throughout India. The intense social discrimination about drug addiction forces people to avoid getting help while causing them problems with community acceptance after recovery programs. The insufficient communication between different healthcare services causes poor treatment results because patients receive disjointed care that creates primary healthcare and mental health service fragmentation. Healthcare professionals lack enough training in addiction medicine which results in incorrect diagnoses and inadequate treatment methods and substandard patient-focused care. The implementation of national substance use disorder policies meets challenges because bureaucracy performs ineffectively and authorities lack funding and inadequate monitoring systems. The evidence shows that community-based recovery programs involving families and local communities prove successful in preventing relapses yet states stop implementing such approaches due to underutilization. India faces various obstacles because of insufficient research data about substance addiction patterns and rehab therapy performances, leading to difficulties in designing evidence-based treatment approaches[1]. To tackle these gaps in the rehabilitation system, the approach should combine increased access to treatment facilities with healthcare service integration alongside stigma reduction programs and enhanced healthcare worker training as well. Several essential reforms are needed to make the Indian system of drug addict rehabilitation and medical care effective in addressing the rising addiction crisis[2]. When India established the Narcotic Drugs and Psychotropic Substances (NDPS) Act during 1985 it became a fundamental advancement for their drug control infrastructure. The legislation combined earlier drug control acts to establish strict

restrictions for narcotic drugs and psychotropic substances in order to prevent their manufacturing and circulation. As outlined in the NDPS Policy of 2012 supply reduction alongside demand reduction and harm reduction comprised the main enforcement goals.

1.2 Judicial Shift from Punishment to Rehabilitation for Drug Addicts

In the case, Sukhwinder Singh @ Sabi, Pooja Sharma, and Karan Baggi v. State of Punjab,The primary issue was the accused's alleged involvement in Gurpreet Singh's death by heroin overdose. The court had to find out whether the accused had forced the deceased to do so or was it a case of voluntary substance abuse. They, likewise, as drug addicts were identified as petitioners, and the question is whether they need to be subjected to punitive measures or directed to rehabilitation. The judgment came in favour of the accused by granting them bail, but then directed to not commit them for admission in de-addiction center. Having been criminalised, there lies a vital gap in the Indian legal system whereby those grappling with drug dependency are pushed to criminal proceedings rather than allowed for medical intervention. The court also pointed out that both the accused and the dead were habitual drug users and had earlier undergone de-addiction in a centre. While they are known to be addicted, the NDPS Act only has provisions of punitive measures rather than of rehabilitation. The ruling did not consider any alternative that the accused be directed towards a structured de-addiction program that would serve as an alternative to incarceration[3].

While there is increasing judicial trend in India in acknowledging drug addiction as a medical problem rather than a criminal offence, there is still a visible lacuna of any judicial guidelines to direct the rehabilitation of addicts caught in the legal system. Sentencing with rehabilitation must include policy reforms that embrace those addicted rather than actively involved in drug trafficking and the ruling confirms that the latter should not be handed years in prison instead of

rehabilitation. An alternative approach would be closer to international models and would entail judicial discretion to order mandatory de-addiction programs for those accused persons having a history of substance abuse, so that they may be taken care of medically and avoid being prolonged through criminal trials and incarceration. The current judicial system represents an advancement that corresponds with current medical interpretations of addiction by treating drug addicts as patients needing health care. The restoration approach implemented by the court deals directly with addiction roots to minimize people from re-offending while promoting their successful return to society. Under the Ministry of Health and Family Welfare the Drug De-addiction Programme (DDAP) launched its first centres in medical colleges and district hospitals during 1988. Medical facilities at these centres offer substance use disorder treatment which demonstrates an organized approach toward incorporating medical approaches in addiction care[4]. The rehabilitation services face important structural deficits in addition to delivery system deficiencies. The drug treatment system in India today needs changes because there are insufficient evidence-based care options and outdated abstinence-only approaches and inadequate medication-assisted treatment integration. The path to effective rehabilitation remains obstructed due to pressure on patients to accept treatment and the combination of public discrimination with insufficient mental support[5]. The Sukhwinder Singh case demonstrates that society needs a refined method to separate illegal activities from medical assistance for substance use disorders. The judiciary can lead the way in filling healthcare service gaps by steering drug addicts toward rehabilitation instead of sending them to prison. The method lines up with worldwide best practices and provides a more compassionate and effective remedy for combating drug addiction in India[6].

The Indian Supreme Court established new principles for evaluating confessions made to Narcotic Drugs and Psychotropic Substances (NDPS) officers in their ruling that

changed evidence standards. The main issue at stake in this case centered on whether statements recorded by Narcotics Control Bureau officers through Section 67 of the NDPS Act would qualify as confessions capable of serving as strong evidence against defendants. When enforcing the NDPS Act officers achieve no status as "police officers" which renders all voluntary statements inadmissible under Section 25 of the Indian Evidence Act 1872. The court established an essential protection through this ruling which protects NDPS Act defendants from conviction through questioning done in their custody. The legal decision regarding Tofan Singh applies directly to India's present-day drug addiction management and patient rehabilitation methods. The court declaration underlined both procedural correctness along with due process requirements which reaffirmed that individuals need protection from self-incrimination. A large number of drug addiction cases under the NDPS Act result in involuntary confessions through coercion which drives them to prisons rather than receiving treatment. The decision indicates a necessity for courts to change their approach to supervised rehabilitation over incarceration of drug-using individuals. The legal decision follows the growing movement which views drug use as medical rather than criminal treatment. Through supreme court restrictions on confession admission the legal system now allows rehabilitative practices while protecting people from wrongful imprisonment and compelling police organizations to base their cases on actual evidence. The outcome from this case establishes an essential basis that urges reform of Indian drug legislation to separate medical treatment recipients from genuine traffickers[7].

Under the Narcotic Drugs and Psychotropic Substances (NDPS) Act of 1985 India controls the use of substances through penalizing all activities involving narcotics drugs. Judicial interpretation of this law experienced a transformation over the recent years. Judicial decisions in the past emphasized harsh penalties for all drug crime offenders yet modern rulings

recognize separate punishments for drug traffickers and drug users by offering treatment options to addicts. The enforcement practices are uneven despite existing laws because most drug arrests in the population involve people who are addicted to drugs instead of traffickers leading to doubts about what works best to treat addiction. The legal system of India is now adopting a therapeutic redirection for individuals who use drugs. Rehabilitation through medical attention has gained court approval as an alternative to criminal punishment since substance abuse exists medically instead of criminally[8]. The case of Sukhwinder Singh V. State of Punjab serves as a significant example of this transition. The Punjab and Haryana High Court gave bail to the drug addict through a court order which sent him to receive treatment at a government de-addiction centre instead of putting him in prison. The court also recognized that medical help is needed for treating addiction and blocking rehabilitation services for people who need help reveals an inadequate response to the underlying problem. Judicial understanding has gone through a widespread change which views addiction through a medical perspective demanding care rather than penalization[9].

The government of India has achieved important legal and judicial developments but these initiatives leave essential deficiencies in its drug addict treatment approach. The recovery facilities across India possess constrained access and irregular geographical positioning along with insufficient material support and professional staff and competent therapeutic practices[10]. The government operates de-addiction programs by using dated withdrawal-based treatment models instead of proven medication-assisted treatment (MAT). The insufficient connection between rehabilitation services with healthcare systems creates obstacles for continuing care delivery for addicts who are recovering from addiction. Due to negative public perception of drug addiction many individuals hesitate to get help and the mostly punitive stance that law enforcement takes towards addiction[11]. A full-scale approach

must be developed to manage substance abuse properly throughout India. The fight against substance abuse needs better legal definitions between traffickers and addicts along with expanded treatment facility funding and proven therapeutic practices including counselling. Opioid substitution therapy and needle exchange programs must be better enforced according to evidence from successful international programs because they demonstrate positive results.

1.3 Responses to Drug Trafficking: Lessons from Central Asia and its Implications in India

Drug trafficking together with drug use generates a severe non-traditional security concern affecting territories beyond borders while destroying state security foundations. Globalization and economic liberalization since the Cold War period enabled the illicit substances to thrive which doubled as both threats to human security and national sovereignty. As one of the former Soviet Union territories Central Asia functions as a key delivery zone for drug trafficking where Afghan heroin spreads destructive forces that cause instability together with corruption and terror activity. The political and economic conditions of these recently formed states worsened the drug problem as their governments proved unable to halt the drug trade effectively. State capacity stands as the most visible manifestation of the drug trafficking and state fragility relationship because these states prove unable to create solid institutional foundations. Organized crime groups along with no-state-actors thrive because of the weak border controls combined with under-enforced laws and pervasive corruption. Drug cartels have overcome borders to penetrate all essential governmental institutions including law enforcement agencies as well as courts and political organizations which protect their illegal business flows. The funds earned from drug trafficking kill state institutions so effectively that the crisis becomes increasingly difficult to combat[12].

The Central Asian situation serves as a warning sign because India needs to focus on its developing drug abuse and

trafficking problems. India serves as a vital transit point for narcotics because it lies in between the drug-producing regions of the Golden Triangle and Golden Crescent countries. The experience in Central Asia shows that unprotected borders coupled with inadequate legal changes will expand Indian organized crime operations throughout the country. Drug-related offenses have become so serious to the Indian judiciary that they adopted rigorous policies to address them. The essential conditions of the Narcotic Drugs and Psychotropic Substances Act, 1985 enforce tough disciplinary measures against drug-related offenders alongside established rehabilitation programs. The Indian legal system confronts difficulties when trying to solve the fundamental reasons behind drug abuse despite having existing laws in place. Judicial authorities predominantly choose destructive punishment enforcement methods without addressing social economic elements which push people toward drug addiction. Indian authorities primarily use enforcement methods to combat substance abuse despite evidence demonstrating that other jurisdictions effectively minimize harm through specific drug policies. Enforcement-based strategies which break down organized drug operations still leave unaddressed the growing market demand for narcotics and so they work only short-term to reduce drug problems[13].

The judiciary plays an essential role in fighting drug trafficking because of its connection to organized crime. Indian courts established the core connection between terrorist financing and narcotics trade in multiple vital cases to establish law enforcement cooperation with international bodies and intelligence networks. The Supreme Court of India has strengthened drug enforcement rules through multiple court decisions that support drug addict rehabilitation programs as well as social reintegration policies. Legal doctrines continue to develop into a new direction because punitive enforcement alone proves inadequate for effective control of drugs so a combination of punishment and public health programs

becomes the necessary solution. Observations from Central Asian drug trafficking reveal important insights crucial for India to understand about the extensive threats faced by national security due to illegal drug operations. The entry of money from drugs into national institutions threatens democracy because it leads to corruption which undermines public acceptance of government institutions. Law enforcement policies should receive support from the Indian judiciary to promote simultaneous implementation of harm-reduction strategies and tough enforcement against drug-related crimes. The elimination of drug trade requires a complete approach that combines legal enforcement alongside social measures and economic strategies to achieve complete elimination of this problem.

The judicial interpretation of Section 50 from the NDPS Act requires courts to ensure accused people know they can get searched only with presence of a Magistrate or a Gazetted Officer. According to the ruling of the court both search and seizure operations under the NDPS Act must respect this essential right of the accused to be informed during a search. Allusion of evidence from these operations occurs whenever this requirement is violated. The judgment served as an essential aspect in maintaining fairness during drug enforcement prosecutions because it safeguarded against unfair police conduct. The court decision demonstrated the requirement of strict adherence to procedural laws to safeguard constitutional rights for NDPS Act accused individuals. India's legal approach to drug trafficking receives major significance from the Baldev Singh case. The judgment about Baldev Singh proves the need to achieve the right balance between drug enforceability and legal procedural standards while the NDPS Act offers authorities harsh punishments for drug offenses. People arrested under drug laws commonly suffer coercion and unlawful searches which produces wrongful convictions. This judgment in Baldev Singh guarantees law enforcement professionals cannot perpetrates abuses during drug

enforcement operations thus guaranteeing fair treatment of individual citizens. The need for India to develop a legal system regarding drug trafficking becomes more crucial because these laws need to protect both security interests and human rights. Through this judgment a precedent has been established to separate drug traffickers from addicts which sets conditions for creating a judicial system that provides rehab services to users along with strict measures against organized criminal drug networks[14].

1.4 The Role of Psychosocial Interventions during the process of Recovery

Substance use disorders affecting teenagers demand multiple treatment options beyond medication because this situation needs complete care for success. Sustainable drug dependency recovery depends heavily on psychosocial treatment as its base operational method for non-drug-based interventions. A short-term stabilization is achievable through medications yet real rehabilitation requires a structured approach of psychosocial support with both individual counselling and group therapy components. The treatment goal seeks total abstinence that extends past brief periods of sobriety by changing the behaviours of patients permanently[15]. Many substance abusers face their toughest challenge for enduring recovery because they exist within a deeply established drug-using subcommunity. Such therapy works to create lifestyle changes and establish productive patterns to help people free themselves from their current environment. The recovery process includes learning new skills together with reconnecting with society and undergoing permanent behavioural adaptation. Different treatment approaches exist to match addiction severity levels of patients. Specific interventions that last between one and four sessions help motivate changes in non-dependence users. Two main categories of extended interventions include cognitive behavioural therapy coupled with relapse prevention programs alongside social skill training with expressive psychotherapy[16].

The Supreme Court of India established rehabilitation and reintegration as essential elements for vulnerable individuals especially children who have been saved from trafficking and forced labor situations. The NGO Bachpan Bachao Andolan used a public interest litigation (PIL) to file the case for judicial intervention against child trafficking and exploitation together with abuse. The Court acknowledged there must be an organized system which gives support to trafficking victims who require support for societal integration after rescue. The court ordered government institutions to create rehabilitation homes together with vocational education and mental health support programs for assisting children after rescue. The court compelled the state to build recovery-focused policies which focus on offering care instead of punitive measures to vulnerable individuals. The guidelines set by Bachpan Bachao Andolan demonstrate high value for understanding drug addiction alongside trafficking throughout India. Individuals who are addicted to drugs must receive a complete recovery system instead of being punished because punitive measures push them even further away from social connection. The court judgment confirms that human-centered criminal prevention requires systematic solutions for victims who face larger societal issues to establish effective change. According to this viewpoint India needs separate treatment for those dependent on drugs who need medical help from stronger measures for drug trafficking offenders. The rehabilitation and reintegration efforts implemented in India seek to stop individuals from recurring in substance abuse and crime similar to how the Court reintegrates trafficked children. The local courts demonstrate progress in accepting reformative justice approaches thus introducing comparable standards into drug addiction treatments to deliver suitable medical care without prison terms[17].

1.4.1 Importance of Peer Support Groups and Family Involvement in Psychosocial Treatment

Mutual assistance programs constitute critical elements within the psychosocial treatment structure. The support groups under Alcoholics Anonymous and Narcotics Anonymous give recovering addicts a network to share personal experiences within a structured program that builds emotional and psychological recovery. The self-help groups deliver continuous support to addiction sufferers through their dedication to mutual aid because members share identical experiences with recovery. Professional therapists should remain distant from such groups to protect their natural ability to maintain ongoing operations. The Indian judicial system normally handles drug offenses by prioritizing imprisonment instead of offering rehabilitation assistance to offenders. The Narcotic Drugs and Psychotropic Substances (NDPS) Act of 1985 gives harsh punishments to people found with drugs or carrying out drug trade but fails to provide sufficient focus on addiction recovery and social reintegration programs. The development of Indian addiction reforms can benefit by following the American approach of supervised treatment programs. Drug courts specifically focused on addiction along with vocational training programs and support networks for peers assume a central role as India progresses with its legal strategies against drug addiction. Judicial support is needed for new policies which combine psychosocial treatment approaches in legal systems to provide proper counselling and rehabilitation instead of prolonged detention for arrested addicts. The medical challenge of relapse continues to affect substance abuse treatment programs[18]. The main triggers that lead to relapse consist of environmental signals combined with social influences and emotional problems. Self-monitoring and stress management techniques along with behavioural conditioning practices make up effective strategies for relapse prevention. Patients benefit from cognitive behavioural therapy because the method effectively shows risky scenarios while providing coping skills. The success rate of motivational enhancement therapy for recovery management continues to

increase because it helps patients develop intrinsic motivation to change their behaviour. Psychosocial treatment significantly depends on family involvement. Family support serves to boost treatment results in India because family connections stay strong within the society[19]. The educational process needs to teach relatives that addiction is a medical condition which does not represent moral weakness. Service providers work toward creating supportive recovery spaces by establishing family therapy and multiple-family therapy programs and support groups dedicated to relatives of addicts. Health institutions working with the judiciary should develop family counselling services to run parallel with de-addiction treatment programs.

1.4.2 Preventing Relapse and Ensuring Long-Term Recovery

Recovery processes require two essential elements which are aftercare and rehabilitation support. Satisfactory recovery from detoxification calls for well-defined support networks that include job training and employment assistance and community-based rehabilitation facilities. The Indian legal system needs to establish post-treatment monitoring systems that will continue providing support to recovering addicts in order to stop relapses from happening. De-addiction centres need to cooperate with law enforcement entities so first-time offenders receive rehabilitation services instead of ending up in prison. Restoring justice through psychosocial drug abuse treatment proves more effective than penalizing individuals according to restorative principles. Psychosocial therapies need to be incorporated within India's judicial and policy structure to develop a more supportive approach toward drug addiction treatment. The successful transformation depends on judiciary, healthcare providers and community organizations collaborating to establish a rehabilitation system instead of focusing on punishment for substance abuse control[20].

1.5 Conclusion:

Indian laws face an important choice between treatment-based rehabilitation programs and criminal punishment for addressing drug addiction. The courts of India have rendered important judicial decisions in Sukhwinder Singh @ Sabi, Pooja Sharma, and Karan Baggi v. State of Punjab and Tofan Singh v. State of Tamil Nadu (2020). State of H.P. (2022) and Tofan Singh v. Judicial bodies including State of Tamil Nadu (2020) recognized drug addiction requires medical treatment instead of criminal handling yet relevant rehabilitation policies face execution hurdles. India must increase the availability of de-addiction centres as well as implement harm-reduction techniques and judicial psychosocial support. The long-term recovery of drug addicts depends on creating a complete strategy based on legal system adjustments along with medical breakthroughs and neighbourhood-based intervention programs. India can solve its expanding substance abuse crisis by adopting rehabilitation methods instead of prison-based policies which match international best practices

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