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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.

Dr. Priya Mondal

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.

Dr. Kalyani Abhyankar

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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Patient Rights and Medical Negligence: Balancing Healthcare and Justice in India

By:

Sharon Itagi

Sharon Itagi, (10 BBA LLB) CHRIST (Deemed to be University) Pune Lavasa

Ajay Mathew John

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Abstract

The paper delves into the complex issue of medical neglect in India's healthcare system. It recognizes the dedication of most caregivers, while stating human error can happen and it can also be disastrous in the field of healthcare. Emphasizing a strong culture of safety and work-life balance for health care professionals is key to preventing these types of errors. Despite the esteem in which physicians are held by Indian society, the country is ground zero for violence against medical professionals. The current paper aims to advocate for a balanced approach embracing high value healthcare, where both patient safety as well as the value of clinicians are recognized.It highlights the increase in complaints against medical staff, which is partly an indication of growing awareness of patients' rights.

In the last part, it emphasizes the need for legislative reforms in the medical industry of India. The article calls for a solid medico-legal framework which protects both patients and health care professionals. It illustrates the importance of expert testimony in navigating the complexities of medical malpractice cases. The limelight is given to the rights of the patients in this paper and cases of compensation to the victims of medical negligence. While the author is aware of the ill-treatment towards the rights of the medical professionals, this

paper is limited to discussing the patients rights along with terms of compensation under Indian law.

Keywords : Medical Negligence, Patient rights, Professional Negligence, Compensation.

Statement of problem

While the paper aims to study the complex nature of medical negligence cases, it also emphasizes the role of the medical health professionals for their commitment and dedication towards their work. The problem that will be addressed in this paper is the implementation of the legal framework structured around medical negligence and death due to medical negligence. Factors such as difficulty in proving the act of negligence, inadequate compensation for such cases, delayed or derailed justice and the lack of accountability will be studied further. Legal changes, more stringent regulatory monitoring, and better access to justice for impacted parties are all necessary for a complete solution.

Research Objectives

- To analyze the current legal standing on patient and professional rights in matters concerning death due to medical negligence
- To investigate the difficulties victims of medical malpractice have while attempting to get justice and compensation, and to make suggestions for enhancing the legal system in order to better safeguard patient rights.

Research Methodology

This paper will be constructed according to doctrinal methodology One of the most important and influential methodologies in legal research, Doctrinal legal research is a method of analyzing and synthesizing legal rules, principles, and values through logical reasoning and interdisciplinary approach.

Introduction

“Primum non Nocere” which means "First, do no harm" is the famous quote from Hippocrates that doctors still take under the Hippocratic Oath, which is based on this

fundamental idea. There are certain professions where a tiny mistake or a mishap can cost a life. One such profession in the world is the healthcare sector. While people wonder why it is so difficult to enter into this profession, it is for this main reason that there can be no prospect of a mishap in their lifetime. While other professions such as legal, technical, architectural etc have certain chances to rectify their professional mistakes, it is highly challenging to rectify a mistake that is committed by a medical professional. Results of such acts include ranging from small injury to even a death of the patient.[1] There have been several instances where there have been people who were victims of medical negligence all around the world. Despite the statistics of such accidents, it is important to understand that the great majority of medical personnel are committed to offering top-notch treatment in their own way . They put in endless effort to enhance patient outcomes while striving to maintain the highest ethical and professional standards.[2] But even with the best of intentions, medical mistakes do happen, which is why thorough training, ongoing education, and strong supervision mechanisms are crucial in any medical or likewise establishment.[3] Patient safety should be given top priority in hospitals and clinics by putting in place thorough procedures, encouraging candid communication amongst medical staff, and fostering a culture of learning the best methods of performing their tasks and duties4 Human mistakes while they can be caused by long working hours, heavy workloads, and the ongoing concern for patients' well-being. Organizations should prioritize work-life balance, offer sufficient support networks, and cultivate a healthy work atmosphere that promotes both physical and emotional well-being in order to lessen the scope of such neglect from the side of the medical workers. Recognising the tremendous strain and stress that healthcare workers frequently experience is also very critical.[5] In contrast, the nation essentially idolizes doctors due to their social standing, the career path they have chosen, and other factors.When a

youngster decides to become a doctor, people are quite proud of them. However, the same people are also the ones who, in some cases, physically assault staff workers. Humans are emotional beings, it's easier to react inappropriately when a concerned member's health is in question. The two facets of India's medical healthcare industry.

The ultimate objective, all in all, is to achieve a balance between appreciating the enormous commitment of healthcare workers and understanding the possibility of human mistake. We may strive towards a day when patients can be sure they are getting the best treatment possible by tackling the structural problems that lead to medical mistakes and encouraging a culture of safety and responsibility.

Medical Negligence And Its Impact In The Indian Healthcare Sector

Medical negligence occurs when a person who is entitled to standard duty is denied the same. There must be three conditions to fulfill the criteria for the act to be categorized as a negligent act:

- There must have been a duty of standard care
- breach of the duty
- Cause in fact
- Proximate cause
- Injury / damage [6]

Standard duty of care may vary from case to case but every single medical case has some extent of basic care that is owed to the patient by the medical professional. When a professional breaches that given duty of care which in turn directly results the injury caused to the patient can be termed as Professional negligence on the part of healthcare workers. The duty arises as soon as the patient is in the vicinity of the medical establishment and has been admitted or even during medical investigations. In the landmark case of *Barnett v. Chelsea and Kensington Hospital Management Committee*[7]According to the facts, after drinking tea, three of the night watchmen experienced excruciating stomach aches

and signs of vomiting and distress. Shortly, they showed up to the emergency room of the nearby hospital. The on-duty nurse called the casualty physician with the specifics of their grievance and without even looking at the patients, the physician instructed the nurse to send them home to make their own medical choices. Following which, one of the men passed away the next day due to poisoning from arsenic. His widow then made a claim that said that the hospital's failure to diagnose her spouse was the cause of his death and attend to his health. Initially, the assertion was rejected on the basis of direct causality as it was argued that the death was inevitable. But the court held that the hospital and the staff held a certain duty of care as the men presented themselves with obvious suffering.

In India, medical workers have been battling for their right to safety on the streets of the country conducting protests after protests for some time now. In recent years, there have been several instances where medical staff members have received poor treatment, neglect, or even physical assault.[8] Failed surgical procedures are one of the major reasons for the deaths caused due to medical negligence. These procedures are mostly complex structures that need an immense amount of attention to detail. Incompetence is rarely a reason in such cases as medical school is a rigorous course that is undertaken by medical professional aspirants. Apart from the intricacies of the medical procedure itself, the lack of trained judiciary also plays a major role in deciding whether there truly was lack of reasonable duty or a breach of duty during the event of the medical mishap.[9] Under the newly implemented legislation which was introduced in 2023, the Bharatiya Nyay Sanhita 2023 (BNS) which replaces the Indian Penal Code. Section 106 of the BNS explains a negligent act and injury or death caused due to a negligent act. Sub-section (1) of Section 106 describes negligence caused by a medical professional making the part of the section exclusive for the healthcare professionals.[10] The punishment, although in the new act,

recognises medical negligence cases separately and the term of imprisonment for negligence caused by a medical practitioner is punishable for two years instead of five which is the term for death caused due to negligence.

Patients Rights

Consumer advocacy has been on the rise for the past few decades and healthcare consumers' voices are being heard out now more than ever but regardless of all the show and pomp about the misdirection regarding the attention received by the patients or victims of a medical negligence, the journey till what it is now includes several deaths, irreparable loss including permanent disability.[11] It should come as no surprise that the number of deaths attributable to medical carelessness is increasing and now stands at thousands and lakhs. It's not that the number of incidents is increasing; rather, it indicates that the consumers of medical services are no longer attempting to suppress it. Victims are coming up and filing complaints against healthcare professionals for failing to uphold their duty of care.[12]

The constitution of India under Article 21, provides medical autonomy and the rights of the patient to self - determine. Sometimes, the patient might after all know what decision is the best for himself and during such situations, if medical professionals do not take the decision of the patient into consideration and further go ahead with their expert opinion, even if that opinion was the best decision for the patient, it will be treated as violating a fundamental right of the patient. Informed consent is also as important as any other right. It is when the party is informed clearly about the investigations, methods of treatment, side effects (if any) outcomes and costs etc. The Bolam test[13] still holds good as of today in the Indian Courts. This test has been acknowledged and approved world wide after the case of *Bolam v Friern Hospital Management committee*.

Right To Compensation For Death

A loss of life is most certainly an irreparable loss and a damage that cannot be undone or hoped for a silver lining. Losing a life during a medical treatment is one of the hardest deaths as the patient is admitted to be treated by the professionals and when the same professionals compromise on the standard duty of care that leads to medical negligence which in return causes the death of the patient is a highly unprofessional and unacceptable fate. However, catastrophic, these instances do happen very often and they cannot be completely avoided or prevented. While it is absolutely impossible to put a price on a life, the aggrieving parties are entitled to compensation for the loss incurred on top of the criminal liability in cases of death caused due to negligence of a medical practitioner. The said compensation will either be paid by the doctors/medical professionals or by the hospital and in some cases by both, determining the accountability and liability of individuals as well as the establishment.

The principle of "restitutio in integrum" is applied for calculating compensation. It is translated as the amount of monetary compensation that will match the amount, if the person had not been injured or demised due to this negligent act adding to the medical expenses in this case and other factors such as financial distress and for the suffering of the aggrieved parties.[14]

In the case of *Balram Prasad vs. Kunal Saha*, where Anuradha Saha, the patient was treated negligently as she was administered a life threatening dose injected into her which was later found to be the wrong step in the whole procedure of treatment. She passed away shortly after this. After 15 years of lengthy legal battles with its ups and downs, focussing on Article 21 of the Indian Constitution, the court ruled that a healthy life is a basic right and that it is actionable for carelessness that injures that right without the standard duty of care. The National Commission's request for a 10% claim deduction actually raised the value which made a significant

advancement in medical negligence cases, and set an example that even highly qualified experts might be extremely careless and hence not fall under the duty of care.[15]

Conclusion

The healthcare sector is an emerging field in the perspective of law enforcement. While it is an established fact that legal interventions in all fields ensure smooth running of the operations of their respective fields, it has become abundantly clear that in the medical sector, the laws could use some reforms. After all, this is just the early stepping stones into the evolution of the medico-legal aspect of healthcare in India. With a country that produces a mass population of medical graduates around the world, India cannot afford to not have dedicated legal provisions for the safety and security of both the patients and the medical personnels. The rights of the parties involved in a medico-legal case must be robust and constructed in a way that it will be fairly judged by the judiciary with the reliance of expert opinions since medicine is a very complex field that cannot be easily mastered by someone in the legal profession.

To fully realize the potential of India's healthcare sector, a strong medico-legal framework is required. This framework should not only address urgent concerns about patient safety and doctor rights, but also foresee future issues posed by advances in medical technology and shifting public expectations. In fields such as telemedicine, mental health, clinical trials and research as well as the use of Artificial Intelligence in the medical sector as an assistance tool to the medical staff should be carefully categorized and written upon.

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Journey so far : Road way to CSIR

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Abstract

CSR (Corporate Social Responsibility) and CSI (Corporate Social Irresponsibility) happen to be two sides of the same coin, and if we toss the coin hard enough we get a glimpse of CSIR (Corporate Social Innovative Responsibility). CSIR is the comprehensive framework that a business would like to integrate profitability with social and ethical responsibilities. CSIR extends this by incorporating innovation into social responsibility, thus compelling businesses to create novel solutions that address societal challenges while driving business growth.

This paper discusses the interactive relationship between CSR and CSI, which addresses their effects on corporate reputation, stakeholder trust, and sustainable business operations over time. The paper considers both historical and modern cases of CSR practices and CSI events to explain their etymology, expressions, and outcomes and further explores the evolution, significance, and implementation of CSR and CSIR and how they affect stakeholder relations, brand reputation, and sustainable development. The study points out the shift from compliance-based CSR to transformative CSIR. It underlines the ethical dichotomy within corporate operations and shows how innovation can be a driving force in addressing the challenges faced globally, such as climate change, inequality, and resources. It uses case studies and best practices to provide understanding of how these frameworks can be aligned to the strategic goals of companies that seek long-term success and significant societal impact.

Keywords

Corporate Social Responsibility (CSR), Corporate Social Irresponsibility (CSI), Corporate social Innovation Responsibility (CSIR), sustainability, innovation, stakeholder engagement, societal impact, brand reputation, sustainable development.

Introduction

The concept of corporate social responsibility (CSR) has gained significant traction in recent years, with companies increasingly recognizing the importance of balancing profit-making with social and environmental considerations. In the context of India and the UK, the regulatory frameworks governing corporate social responsibility and corporate social irresponsibility present an intriguing comparative analysis.

It is Imperative to study the two together as they are different sides of the same coin. It is well-established that companies can have a significant impact, both positive and negative, on the societies in which they operate. Further a companies actions cannot be considered solely in terms of profits, as they are subject to the scrutiny of various stakeholders and more over the impact of their past or future irresponsible behavior. Every firm therefore must consider the externalities it imposes and address them accordingly to fulfill its role as a responsible corporate citizen — by ensuring that the irresponsibilities are either minimised or atleast covered by the CSR performed (tallied with past CSR credit).

Corporate Social Responsibility (CSR) has become the new foundation of modern business strategy, where organizations are expected to balance economic performance with social and environmental accountability. CSR emphasizes voluntary actions that contribute to societal well-being, including sustainable practices, community engagement, and ethical operations. Companies adopt CSR not only to fulfill ethical obligations but also to enhance brand reputation, foster customer loyalty and meet stakeholder expectations in an increasingly conscientious market.

Corporate Social Irresponsibility (CSI) is the business practices that cause harm to society, the environment, or specific stakeholders through negligence, greed, or unethical conduct. Unlike CSR, which is concerned with adding value to society, CSI emphasizes failures or actions that undermine ethical standards and societal trust. Companies involved in CSI may consider profits over environmental sustainability, exploit labor, or be non-compliant with regulations; these are negative consequences that lead to a destroyed reputation and financial stability.

With increasing global problems, the direction from compliance-related CSR to CSIR, now driven by innovations, reflects strategic and proactive response to sustainability challenges. This article examines the trend of these tools in terms of development, adaptation and resultant impact on relevance in promoting the sustainability of both business and social life.

The Evolution of Corporate Social Responsibility (CSR)

CSR has, therefore, emerged from the fringes of a business agenda into a strategic imperative in modern times. The business commitment to contributing to sustainable development, encompassing ethical practices, community involvement, and environmental stewardship, was defined by Carroll (1991). Once seen as voluntary and philanthropic in nature, CSR has grown to become an overall framework through which corporate actions align with societal expectations and stakeholder demands. This evolution also underlines growing awareness that profitability and sustainability over the long run are interdependent.[1]

The Birth of Corporate Social Irresponsibility (CSI)

The concept of CSI was found as a contrast to the idea of CSR that has been popularly accepted in the world. CSR emphasizes the contributions that businesses make to society in a positive way, whereas CSI emphasizes the harmful, unethical, or negligent actions that corporations undertake, usually at the cost of societal, environmental, or economic

well-being. The recognition of CSI grew as globalization and industrialization expanded, bringing increased scrutiny to corporate practices that prioritized profits over ethical considerations.

Journey towards Corporate Social Innovation Responsibility (CSIR)

Although CSR has focused on compliance and ethics, CSiR represents a paradigm shift because it integrates innovation into the scheme of social responsibility. Unlike CSR of tradition, which is primarily focused on compliance and ethics, CSiR motivates Corporations to develop innovative answers to societal issues. CSiR is forward looking and solution oriented by using technology, collaboration, and creative thinking to deal with climate change, resource depletion and social imbalances. This approach ensures that social responsibility goes beyond being a reactive strategy but rather becomes proactive so that it transforms societal problems as well as the businesses for positive outcomes.

Relevance in Today's Global Landscape

The shift from traditional CSR to CSI is more noteworthy concerning the growing global issues. The origins of CSI can be traced back to the industrial period when companies manufactured in bulk, paying scant attention to labor laws, social welfare and even environmental conservation. As an example, the 19th century industrialization in Europe and North America was very much inhumane towards its labor, having poor working environment, and unrestricted pollution. Such instances gave rise to the notion and questioning of unethical corporate behaviours.

The shift from traditional CSR to CSIR is most notable regarding the growing international concerns. When stakeholders expect greater responsibility and greater fulfillment of these expectations, organizations have no choice but to embrace non-philanthropic strategies. This paper deals with the concepts, schemes, and consequences of CSR and CSiR. It attempts to analyze how they contribute to sustainable

development and responsible business within the context of the future.

Research Objectives

1. To know the key principles and frameworks underlying Corporate Social Responsibility (CSR) and Corporate Social Innovation Responsibility (CSIR).
2. To comprehend how CSR and CSIR practices impact stakeholder relationships, brand reputation and organizational performance.
3. To critically evaluate the effectiveness of CSR and CSIR initiatives in addressing global challenges such as climate change, inequality and resource scarcity.
4. To know comparative approaches and strategies adopted by organizations in order to implement CSR and CSIR across different industries.
5. To Understand the role innovation plays in converting traditional CSR to CSIR to drive sustainable development and business growth.

Research Questions

1. What are the core principles and main differences between Corporate Social Responsibility (CSR), Corporate Social Irresponsibility (CSI) and Corporate Social Innovation Responsibility (CSIR)?

2. How do CSR and CSI initiatives affect stakeholder relationships and brand reputation?

3. In what ways CSR and CSIR contribute to a solution for a global challenge about climate change, social inequality, and resource scarcity?

4. How do organizations across various industries implement CSR and CSIR strategies, and what best practices can be identified?

5. How does innovation in CSiR impact the sustainability and long-term business growth of organizations?

Research Methodology

Data Collection Method

This research will only rely on secondary sources of data such as academic articles, industry reports, case studies, government publications, and credible websites. All these sources will provide insights into the theoretical bases, practical applications, and results of CSR and CSIR. The secondary data will be sourced from the JSTOR database, Google Scholar, and other industry reports, thereby covering all aspects of the subject matter.[2]

Data Analysis

The secondary data collected will be analyzed qualitatively, including thematic analysis and content analysis, to identify key trends, themes, and patterns in CSR and CSIR practices. This will help synthesize the information, draw comparisons, and evaluate the effectiveness of CSR and CSIR initiatives across different organizations and industries.

Justification for Secondary Data

For the purpose of this research, secondary data is very suitable because access to a wider range of already existing literature and reports reduces the time and resources which are associated with primary data collection. The previous published data, expert opinions, case studies, and documented trends of real-world data can be leveraged to carry out a very comprehensive analysis on CSR and CSIR strategies and their impact as well as their effectiveness.

Scope of Data

Secondary data scope will consider the historical and contemporary views of CSR and CSIR, particularly with regard to the industries that have embraced these concepts actively and implemented them in their activities. It encompasses multinationals, SMEs and nonprofits organizations that are active towards sustainable development and innovation in CSR/CSIR practices.

Limitations of Secondary Data

The limitation of using secondary data is that it might be biased or lack information, since some sources may not be comprehensive enough to reflect the latest practices or views.

Moreover, the context of CSR and CSIR strategies may differ in different regions, and this research will depend on the data available without direct interaction with industry practitioners.

Significance of the Study.

In short, this paper is relevant for many reasons: as a contribution toward the growth in knowledge regarding the two issues (Corporate Social Responsibility and Corporate Social Irresponsibility) concerning the orientation of profit management to match other forms of society and environment benefit.[3] Exploring the evolution of such frameworks is valuable to most organizations interested in developing sustainability skills as well as learning to innovate towards social good. In addition, the study identifies strategic benefits of CSR and CSIR adoption, including enhanced brand reputation, stakeholder trust and long-term competitive advantage.

This research will further provide insight into The importance of accountability mechanisms to mitigate CSI and promote CSR has been further enhanced in this study. Effective measures discussed include tools such as sustainability reporting, third-party audits, and the inclusion of ESG criteria in business strategies. This mechanism does not only improve transparency but also provides a culture for ethical decision-making within organizations. The study would help companies around the world develop and implement viable CSR and CSIR strategies that go along with moral and business aspirations. It could serve as an essential guide that allows organizations to spot areas they could improve to increase their effective contribution to better social responsibility through innovation.

The study will provide Through an in-depth review of literature and case studies, this abstract sets the stage for a nuanced analysis of how organizations navigate the spectrum between CSR and CSI, offering insights into the strategies needed to drive ethical corporate behavior while addressing the challenges posed by irresponsible practices.

Third, this research will help the stakeholder-including investors, customers, and workers-make an informed decision in which to invest by supporting responsible businesses. In response to increasing consumers' demand for value-compatible brands, the company adopting CSIR frameworks is most likely to realize loyalty of customers and expand market share for a longer run.[4]

From this analysis, one can see that CSR initiatives enhance brand equity, stakeholder loyalty, and regulatory compliance, but incidents of CSI harm the reputation of the organization and result in liabilities and financial loss. The two sides of the coin of CSR and CSI thus reveal the conflicts that businesses undergo in terms of balancing profit and ethical considerations

Data Analysis

1. Key principles and frameworks underlying Corporate Social Responsibility (CSR) and Corporate Social Irresponsibility (CSI) and Corporate social innovative responsibility (CSIR).

Corporate Social Responsibility (CSR) is founded on the notion that businesses have an ethical duty to give back to society beyond making profits. The main tenets of CSR are:

- **Accountability**: A company should be answerable not only to shareholders but also to its stakeholders such as employees, customers, communities and the environment.
- **Sustainability:** CSR advocates for sustainability practices that cause less harm to the environment and sustain the resources and ecosystems for a long time.
- **Ethical Behavior**: Businesses are meant to operate under a morally responsive manner, with principles including fairness, transparency, and integrity.[5]
- **Community engagement**: CSR holds companies responsible for philanthropic exercises, support within the local communities and contribute to societies' well-being through education, health and environmental sectors.

It takes the principles of the previous theories a step further by incorporating innovation as part of social responsibility. The focus shifts from traditional and often passive CSR actions (such as mere donations or compliance) to proactive, strategic innovation for solving the challenging problems facing the world today.

CSI comprises the following key principles:

- **Profit Maximization at Any Cost**

The heart of CSI is the maximization of profit at the expense of ethics. Companies involved in CSI tend to focus on short-term gains, ignoring the long-term social, environmental, or economic implications of their actions. This approach often results in exploitation, resource depletion and reputational damage.

- **Neglect of Stakeholder Interests**

CSI is characterized by an unconcern for the needs and rights of stakeholders, such as employees, customers, suppliers, and local communities. This neglect is expressed in labor practices, unfair pricing strategies, and lack of community engagement, which reduces trust and weakens relationships with key stakeholders.

- **Non-Compliance with Environmental and Social Requirements**

Companies displaying CSI seldom observe environmental requirements and social accountability. This relates to the desecration of the environment, contributing to climate change and disregarding the responsibility of businesses towards sustainable development. Such an activity reflects that corporate activities do not hold responsibilities towards the well-being of the greater society at large.

- **Transparency and Ethical Governance**

Transparency is what defines the accountable corporate conduct while its lack determines the feature of CSI.[6] Usually, firms resorting to unaccountable conduct withhold unethical conducts under false pretensions, undisclosed items, or fabrications of reports. Without holding them responsible

before the public causes loss of faith and adds them to the risky list for any regulatory fines that may occur at any point.

2. CSR and CSI practices impact stakeholder relationships, brand reputation, and organizational performance.

- **Stakeholder Relationships**

CSR practices engage stakeholders by addressing the interests of employees, customers, suppliers and local communities. Ethical labor practices, community involvement, and environmental initiatives foster trust and loyalty. For example, companies that pay fair wages and ensure safe working conditions strengthen employee satisfaction and productivity. In contrast, CSI harms these relationships because it neglects the needs of stakeholders, leading to conflict and discontent. Labor exploitation, for instance, not only harms employees but also attracts condemnation from consumers and activist groups, thereby weakening the relationship of corporations with key stakeholders.

- **Brand Reputation**

Social and ethical activities of a company are highly related to its reputation. CSR helps create a better image of the brand as the organization projects itself as responsible and reliable. Organizations which support environmental sustainability or social causes gain higher appreciation from customers, hence the competitive edge is created . In contrast, CSI has negative impacts on brand reputation. Negative publicity in the media, consumer boycotts and loss of goodwill arise from events like environmental disasters, fraudulent practices, or labor rights violations. Restoring a reputation can take time and cost the organization more money, putting further strain on organizational resources.

- **Organizational Performance**

CSR practices positively influence organizational performance by driving customer loyalty, employee morale, and operational efficiency. Ethical businesses attract socially conscious consumers and skilled professionals who align with the company's values, contributing to sustained profitability.

Furthermore, CSR initiatives can lead to operational cost savings, such as reduced energy consumption through sustainable practices (McBarnet, 2009).[7] On the other hand, CSI undermines performance by exposing organizations to financial penalties, legal liabilities, and declining consumer trust. For instance, companies involved in scandals often face reduced sales, shareholder divestment and increased regulatory scrutiny, all of which adversely affect profitability and long-term stability.

3. The effectiveness of CSR and CSI initiatives in addressing global challenges such as climate change, inequality and resource scarcity

- **Climate Change**

CSR practices, such as renewable energy adoption, carbon footprint reduction and sustainable supply chain practices, combat climate change. Companies like Tesla and Patagonia lead through innovation in green solutions and raising awareness. On the other hand, CSI practices, such as high emissions and deforestation, increase global warming, which undermines the efforts to combat climate change.

- **Inequality**

CSR encourages equity through fair wages, diversity programs, and community development, thus reducing social disparities.[8] For example, Starbucks' emphasis on employee benefits supports economic equity. However, CSI, through labor exploitation and wage gaps, increases inequalities, which creates social unrest.

- **Resource Scarcity**

CSR promotes sustainable resource management through recycling, water conservation, and innovation in renewable materials. IKEA's circular economy is an example of this. On the other hand, CSI practices such as over extraction and waste generation deplete resources, thus intensifying scarcity and environmental strain.

4. Comparative approaches and strategies adopted by organizations in order to implement CSR & CSI across different industries.

CSR Approaches :

In the technology sector, Apple invests in green energy and responsible sourcing and the financial sector seems to rely on transparency and open community outreach. Unilever and other industry leaders emphasize the circular economy along with responsible manufacturing processes. A majority of sectors, including the automobile industry, have socially responsible initiatives that resemble relevant global problems, like investing in electric vehicles to mitigate climate change, or food and drink companies tackling hunger through their donations.

CSI Practices :

CSR and MSI are intertwined through the notion that a corporation's activities can have both favorable and unfavorable effects. This means a firm can exercise philanthropy, such as funding social causes or protecting the environment, while simultaneously committing acts of social irresponsibility such as pollution or employee exploitation. (Price and Sun, 2017 – suggest firms engage frequently in both "good" and "bad" behaviors).

Also, the link between CSR and CSI can be regarded as a range. (Alcadipani and Medeiros, 2019 – shows that suggested frameworks view CSI and CSR as two poles of a continuum). Depending on where a company falls on this continuum, CSR might be a core part of its business model or simply an "add-on." This perspective highlights the importance of considering both CSR and CSI when evaluating a company's overall social performance.

The pattern of negligence is found through CSI practices. Fast fashion focused on cheap prices has been accompanied by poor labor standards with exploitation and environmental degradation consequences. Oil companies like ExxonMobil have engaged in greenwashing campaigns while

simultaneously failing to attend to actual environmental sustainability. Bank industries experience CSI through fraud activities and information theft while stakeholder confidence has been eroded.

The most effective CSR strategies fuse stakeholder input, regulatory compliance and innovation, but CSI usually originates from profit-driven motives and improper accountability. A comparison of both approaches can help organizations fine-tune practices to reduce damage and maximize effect on the social environment.

5.The role innovation plays in converting traditional CSR to CSIR to drive sustainable development and business growth

Innovation is one of the significant factors that transforms traditional CSR practices into strategies that enhance both sustainable development and business growth. Companies can develop new technologies, business models[9], and processes by integrating innovation into CSR, thus enhancing their environmental and social impact. For example, in the energy sector, renewable energy technologies have enabled businesses to reduce their carbon footprint while promoting sustainability.

More innovative CSR practices lead to compliance but proactively address global challenges like climate change and inequality. Tesla and Patagonia are among the companies that have shown integrating sustainability into the design, manufacture and operations of products to support global goals while building brand loyalty and competitiveness for long-term growth.

Conclusion

Evolution from traditional Corporate Social Responsibility (CSR) to Corporate Social Irresponsibility (CSI) indicates how innovation is being increasingly emphasized for solving global problems and promoting sustainable business growth.[10] Traditionally, CSR has been based on compliance and philanthropic activities; however,

through innovation, companies can transform their approaches to deliver lasting impacts for society and the environment. CSIR enables businesses to go beyond reactive fixes and use innovative solutions to address challenges related to climate change, inequality and resource scarcity. Companies can thus contribute to societal good while enhancing their competitive position, opening new revenue streams and remaining growth-oriented over time by having business objectives aligned with social innovation.

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The Practice of Base Erosion and Profit Shifting: Extent of Permissibility and Forbiddance by Law

By

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Abstract

The advent of globalisation is making it easy for Multinational Corporations to create elaborate international structures with a view of exploiting weaknesses of the tax system by transferring their operational profits from high-tax to low-tax jurisdictions, commonly referred to as Base Erosion and Profit Shifting (BEPS). The research study will focus on the scope of legal boundaries and possible regulatory responses to BEPS. Specifically, it includes investigating the loophole used by Multinational Corporations and examination of the international framework and court role in curbing it. The key tax-planning strategies such as the BEPS project in Organisation for Economic Cooperation and Development (OECD), Anti-Avoidance Rules, and Country-by-country Reporting would be covered within the research paper. The review calls attention to some of the persistence problems in the international tax landscape with a need for changes to foster better tax justice and hold aggressive tax planning at bay. There is a need of global coordination in uniform tax standards and refined mechanisms for anti-BEPS, guaranteeing better revenue distribution and avoiding profit shifting between jurisdictions.

Keywords

Anti-Avoidance Rules, Controlled Foreign Corporation Rules, Country-by-Country Reporting, Multinational Corporations, Organisation for Economic Cooperation and

Development Base Erosion and Profit Shifting (OECD BEPS) Project.

Statement of Problem

The problem of Base Erosion and Profit Shifting (BEPS) came into picture after sudden rise of cross-border and inter-country trade and commerce due to the introduction of globalisation which led multinational corporations to grow in scale and complex structures. As there were advancements in technology, growth in business, achievement in economies of scale and overall increase in profit - it led to the introduction of international tax system. Furthermore, there are a smaller number of conventions which are rather indirectly focusing on the international taxation norms, there is a significant gaps, mismatches and loopholes in tax rules of different countries. This has led to the multinational corporations taking advantage of loopholes in tax rules to reduce the tax liability based on shifting and rearrangement of the economic activities of their corporation taking advantage of their complex corporate structure of the organisation. Therefore, the usual practice done by such complexed structured organisations is shifting of profits from high-tax countries to low-tax or no-tax countries which could be caught in circumstances wherein such shifts are done without any economic activities.

Research Objective

1. To identify legal loopholes that enable BEPS practices;
2. To check-in international frameworks introduced to regulate such practices and examine legal and ethical boundaries of BEPS;
3. To examine efficiency of current mechanism and suggest legal reforms.

Research Methodology

This paper is premised on doctrinal research focusing on the analysis of existing legal rules, principles, and frameworks in the attempt to understand and to interpret their implications on a given issue, namely, the practice of Base Erosion and Profit Shifting (BEPS). This technique involves a critical

examination of statutory provisions, case law, international conventions, and regulatory policies with the view to establishing the extent that current taxation statutes apply, at which points, they leave open legal loopholes, and to what level they prevent or allow BEPS practices. This paper focuses on primary sources such as legislation texts, the Organisation for Economic Cooperation and Development Base Erosion and Profit Shifting (OECD BEPS) framework-and judgments of the courts where provisions and interpretations of tax obligations and anti-avoidance rules are defined, secondary sources which included academic writings, legal commentaries, and the report of the Organisation for Economic Cooperation and Development (OECD) and the G20 to introduce the critical views and insights on the prevailing approach to law regarding BEPS.

This paper analyses tax laws through a critical analysis to interpret the law by defining all the concepts of legal terms that apply, including obligations, loopholes exploited for shifting profits, and their rectification. Thus, it goes into further detailed scrutiny of laws like Controlled Foreign Corporation rules, Country-by-Country Reporting, and Anti-Avoidance Rules, explaining how these laws are created and how difficult their application remains in real practice. The paper addresses doctrinal research with a structured legal analysis of where and how international tax laws intersect, diverge and create gaps that enable BEPS. Such an approach supports recommendations for legal reforms based on identified deficiencies in existing regulations that contribute to the broader discourse about enhancing tax equity and international compliance.

Introduction

The Corporate Tax Planning is a strategy adopted by the corporations by finding loopholes amongst the statutory legislations of different countries. Such methodology is adopted by big companies to save huge portion of their profits from the scrutiny of tax. Such concept of corporate planning

helps the corporations in their structurisation of financial activities and minimisation of their tax obligations thus leading to overall enhanced cash flows and maximisation of profits as an outcome. Various strategies are adopted to manage tax liabilities such as offshoring profits, transfer pricing which is common amongst subsidiaries and treaty shopping are effectively used to manage tax liabilities through multiple jurisdictions. The companies consider various factors such as tax rates, legal compliance and long-term growth of tax haven or tax-free countries before shifting their profits.

The difference between tax avoidance and tax evasion essentially revolved around legality. Tax avoidance can often become tax evasion if performed to deceive the authorities or to hide the income. The thin line between the tax evasion and tax avoidance often gets blurred due to the complex tax planning. The companies find methods of misrepresenting their financial resources and transactions to tax authorities which can fall under the category of tax evasive actions. One of the most prominent practice of tax planning by companies is the Base Erosion and Profit Shifting (BEPS) where multinational companies exploit the gaps and mismatches between tax rules and shifts profits from high-tax jurisdictions to low or no-tax jurisdictions. Such practice is unfair since it takes away tax revenues from designated countries. The Organisation for Economic Cooperation and Development (OECD) has launched the BEPS/G-20 Project against such practices, adopting measures to bring in tax transparency and reduce the tax loopholes amongst countries. Since, it is an inter-nation issue at hand, global cooperation and compliance is a must to seek a balanced approach towards tax planning aiming towards streamlining the taxes according to the international standards.

1. Basic Principles of Tax Planning Law

According to the traditional rules of the corporate taxation system, the principles involve neutrality, efficiency, certainty, simplicity, effectiveness and fairness[1] for establishing a fair and predictable tax environment. These

principles indicate in support of equipping tax saving methods by the taxpayer. But on the other side, the overarching principles of tax policy indicate towards bearing the maximum tax burden by the taxpayer to fulfil the obligations towards the nation under the principle of equity[2]. The Organisation for Economic Cooperation and Development's (OECD) study laid down the purpose of introducing the corporate income tax was to incur revenue from net profits of corporation[3]. But companies have progressively used tax planning techniques over time to reduce their tax obligations, frequently taking advantage of legal gaps and mismatches between several tax jurisdictions. Concerns about Base Erosion and Profit Shifting (BEPS) resulting from this have spurred worldwide attempts to change international tax laws and guarantee equitable tax contributions. Tax planning law is based upon those principles that ensure the lawful and efficient organisation of financial affairs in a manner that tends to minimise tax liabilities without disregard for the intent of tax legislation. It is founded on legality

Namely on strict adherence to all statutory provisions and judicial interpretations upon substance over form, which means that transactions should reflect some genuine economic realities rather than artificial arrangements designed only for tax benefits. The arm's length principle ensures that the transactions between related parties are marketed on a value to prevent shifting of profits. Tax neutrality keeps business decisions free from tax advantage rather than commercially oriented objectives. Anti-avoidance measures with General Anti-Avoidance Rules and Specific Anti-Avoidance Rules contain aggressive tax practices. Transparency and disclosure ensure that compliance is sustained, especially when transferring across borders. Tax planning must also be consistent with the broader policy objectives of fairness, economic growth and integrity in the tax system.

2. Tax Planning Strategies Used by MNCS

The multinational companies who have expanded internationally have developed complex structures, i.e., having subsidiary companies and foot over a number of countries, combinations, acquisitions which has made it easy to take advantage of difference in the governing laws and treaties which provide for tax obligations[4]. Furthermore, due to significant growth in the intangible assets such as IPR and ease of doing business concept has made it easier for corporations to assign profits to jurisdictions with advantageous tax rates even without having physical presence. Significant online presence is sufficient as observed in the case of digital companies that can still avoid tax obligations by generating significant revenue in countries without any traditional permanent establishment or physical office[5].

Aggressive tax planning is wherein the multinational corporations would plan for strategies leveraging loopholes and inconsistencies with the tax laws amongst different jurisdictions allowing taxpayers to reduce overall tax obligations according to the standard tax arrangements. Aggressive tax planning can be legal as well as illegal. Aggressive tax planning often involves the use of changing the routes of income or establishing subsidiaries in low-tax or no-tax jurisdictions, such places which are also known as tax havens[5]. Multinational corporations choose such places which offer low corporate tax rates, stronger financial secrecy, few restrictions on investments, overall making it an attractive and feasible option for profit shifting[6]. Double non-taxation is a method practiced wherein the income is neither taxed in source countries nor in the country of residence. Such method is performed by exploiting mismatches in the international tax system[7].

Transfer pricing involves setting up prices of goods, services or intellectual property which are transferred between the related entities within multinational corporation. The multinationals deliberately inflate or deflate the prices so that the companies can easily shift profits to subsidiaries situated in

the low-tax jurisdictions[8]. Thin Capitalisation is a technique wherein the company is financed with more debt than equity or in other words, a company has more debt to its assets than it has equity[9]. Such structure can result in enormous tax advantages since interest expenses on borrowed funds are accorded tax allowances in most legal jurisdictions while those on equity are not. So, the more debt and the less equity, the fewer taxes they have to pay because taxable income is reduced[10].

3. REGULATIONS IN RESPONSE OF BASE EROSION AND PROFIT SHIFTING

A few regulatory mechanisms have been put in place to control corporate taxation and stop illegal tax avoidance and evasion, improve transparency, halt artificial profit shifting and guarantee equitable tax payments. The main goals of international initiatives are to close or lessen tax gaps, bolster anti-avoidance laws and enhance corporate responsibility. Such regulations discourage profit shifting and abusive tax practices by taxing passive income moved to low-tax jurisdictions and requiring multinational corporations to disclose financial details across jurisdictions. Setting a minimum worldwide tax rate also guarantees that businesses pay their fair share, which lessens the incentive for them to take advantage of tax breaks. By combining these actions, there would be a stronger and more just tax system that would safeguard public funds and encourage international tax compliance.

a. OECD's BEPS Project

The Base Erosion and Profit Shifting (BEPS) Project is an unprecedented global effort spearheaded by the Organisation for Economic Co-operation and Development (OECD) together with the Group of Twenty (G20). Beginning in 2012, the BEPS Project was an attempt at addressing the growing commonality of tax planning schemes that engage with the anomalies within national tax systems in order to re-allocate the proceeds of economic activity away from valued governments and reap them in jurisdictions, often with

significantly reduced taxation systems or even zero taxation at all and almost zero real economic activity[11]. Before BEPS, multinational corporations could effectively plan their affairs to converge to those jurisdictions that offered the most favourable tax measure since many legal loopholes existed hence enabling the use of techniques such as transfer pricing manipulation, hybrid mismatch and thin capitalisation to shift profits[12]. This led to what the OECD would term as 'double non-taxation' where profits were not taxed in any country, thus causing a massive leakage on the tax bases of those countries where the companies conducted their operations[13].

b. Anti-Avoidance Rules (AAR):

Anti-Avoidance Rules (AARs) are provisions within a country's tax system that is intended to check companies from exploiting tax incentives and structures to avoid tax and shield their nations' tax bases. It contains General Anti-Avoidance Rules (GAAR) that, in general, contest all the transactions whose mere purpose is tax evasion by an analysis of case substance over its form, and Specific Anti-Avoidance Rules (SAAR) directly contest particular methods, including thin capitalisation and transfer price structure price[14]. These rules back up such measures as the Organisation for Economic Co-operation and Development's Base Erosion Profit Shifting (OECD BEPS) Project as it combats profit-shifting mechanisms, and requires corporations to pay their fair share of taxes.[15] AARs are necessary for better tax equity, however, there are negative consequences of contract illegality, increase of legal risk, and the compliance costs for digital cross-border businesses[16]. However, as corporate structures and digital economy challenges are changing, AARs are useful for tax compliance and for responding to changes in taxing rights and international taxation in general, including Base Erosion Profit Shifting 2.0 (BEPS 2.0) and the Global Minimum Tax (GMT).

c. Country-by-Country Reporting (CbCR):

Country-by-Country Reporting (CbCR) is an action of the government developed under the Organisation for

Economic Co-operation and Development Base Erosion Profit Shifting project (OECD BEPS) reflecting the necessity of companies to submit specific information regarding their financial performance in each country where they operate[17]. The measures are revenues, profits, taxes paid by the company, employees provided and tangible assets, which give tax authorities better knowledge about the company's economic operations throughout the world[18]. CbCR has emerged with the aim of assisting tax authorities to detect profit shifting and guarantee that profits are required to be taxed on places of economic action and value addition. CbCR enhances the ability of tax authorities to identify the differences in tax returns and fight abuse of tax mandates through aggressive tax planning[18]. The study reveals that CbCR has been implemented by most countries but triggers compliance issues among organisations and questions on the protection of data.

d. Controlled Foreign Corporation Rules (CFC)

Multinationals are exploited to reduce their corporate tax burden through shifting of profits to related entities resident in low-tax or no-tax jurisdiction through Controlled Foreign Corporation (CFC) rules which are anti-tax avoidance measures. CFC rules have also tried to eliminate Base Erosion and Profit Shifting (BEPS) or tried to ensure that the income of a foreign subsidiary owned by the domestic shareholders is taxed in the home country of the parent company whether the income is brought back to the home country or not. These rules apply when ownership threshold and threshold income test are test together and satisfied that the income derived by the foreign corporation is passive or easily mobile and the foreign corporation is owned domestically at some established percentage. Domestic taxation of this income through crafting of CFC rules assists in shielding countries' revenue bases and eradicating manipulative income shifting.

e. Global Minimum Tax (GMT)

As part of the Organisation for Economic Cooperation and Development and Group of Twenty (OECD/G20)

Inclusive Framework on Base Erosion and Profit Shifting (BEPS), the Global Minimum Tax (GMT) was implemented on July 1, 2021, in accordance with the Organisation for Economic Cooperation and Development's (OECD)'s Pillar Two framework. In October 2021, the Group of Twenty (G20) formally endorsed this initiative, which had been approved by over 130 nations. Countries began working toward domestic implementation in 2024 after the final implementation framework and model rules were published in December 2021. The GMT is a historic measure intended to prevent multinational corporations from evading taxes and to guarantee an equitable allocation of tax revenues. For multinational corporations with yearly income over €750 million, it sets a minimum corporate tax rate of 15%, which lessens the incentive to move profits to low-tax jurisdictions. The key components of the framework include the Undertaxed Profits Rule (UTPR), which permits other nations to impose additional taxes in the event where Income Inclusion Rule (IIR) is not applied, and the Income Inclusion Rule (IIR), which requires the parent company of an multinational enterprise (MNE) group to pay a top-up tax if its subsidiaries are taxed below the minimum rate.

4. Gaps in Tax Legislations from Country-to-Country

The Controlled Foreign Company Rules were introduced through the Organisation for Economic Cooperation and Development's Base Erosion and Profit Shifting/Group of Twenty (OECD BEPS/G20) Project, 2012, to eliminate double taxation on cross-border trade. With the growth of the multinational corporations, the aggressive tax planning which allowed them to shift their profits to low-tax or no-tax jurisdictions, posed a problem of eroding the tax bases of countries, which in turn affected their economic activities[19]. Therefore, such practice can have a significant impact on tax revenues in the long run, which has called for international action through such a project. The OECD BEPS/G20 Project aims to address such grievances. Action 3 of this project,

which is titled 'Designing Effective Controlled Foreign Company Rules' aims to strengthen the Controlled Foreign Corporation (CFC) rules to prevent profit shifting through the creation of a uniform international framework.

The uniformity of CFC rules is vital to effectively treating these loopholes. On the face of it, CFC rules are directed at checking profit-shifting through taxing income accrued in low-tax jurisdictions by foreign subsidiaries of multinational corporations by the parent company's jurisdiction[20]. However, radical differences exist in the practice of countries implementing CFC rules[21]. While some countries have limited the extent of CFC rules to apply only to passive income such as dividends and royalties, others include active income under the ambit of CFC rules. This inconsistency undermines the efforts at global taxes as companies can take advantage of laxer rules applicable to CFCs. A harmonised approach toward Controlled Foreign Corporation regimes, which the Organisation for Economic Cooperation and Development's Base Erosion and Profit Shifting Action Plan promises, would improve international cooperation and thereby limit opportunities for tax arbitrage, provide a level playing field and limit profit-shifting. Policy reform suggestions to regulate such practices[22].

5. Policy Reforms and Suggestions

To address the growing problems of tax avoidance and guarantee a just and open taxation system, there is a requirement of effective policy reforms. A comprehensive strategy that encourages accountability, transparency, and fair tax distribution across jurisdictions is needed to strengthen tax laws. Profit shifting and revenue losses can be considerably decreased by promoting responsible corporate tax practices and strengthening compliance systems through coordinated tax frameworks. Furthermore, closing current gaps can be facilitated by providing tax authorities with cutting-edge monitoring tools and encouraging international cooperation. Governments can prevent exploitative tax practices and

promote economic growth by enacting well-structured policy changes that create a more stable and effective tax environment.

a. OECD/G-20 Project

The Organisation for Economic Cooperation and Development/Group of Twenty Base Erosion and Profit Shifting (OECD/G20 BEPS) project should intensify building its membership worldwide and modernise the Base Erosion and Profit Shifting (BEPS) action plan due to new forms of tax avoidance. While it is recommended that BEPS Action 3, concerning Controlled Foreign Corporation (CFC) rules could be augmented by creating a basic model law for CFC legislation to implement the rules in various jurisdictions with more similarities[23]. It also noted that centralising CFC disclosures of different tax jurisdictions within one global database could also facilitate monitoring of profit shifting[24].

b. Multilateral agreements amongst countries

Governments should strive for mutual international tax agreements for Controlled Foreign Corporations (CFCs), which ensure that all countries accept similar measures regarding the definition of CFCs, the taxation threshold, and the enforcement of regulations to stop tax evasion and profit shifting. These agreements would strengthen the international efforts to curb Base Erosion and Profit Shifting (BEPS) by encouraging uniformity in tax laws and lessening the opportunities for multinational firms to take advantage of differences between jurisdictions. They can also include promises of carrying out the CFC rules that have been made based on reciprocity of mutual principles of the states and sharing of information on tax. The legal prerequisite for creating an international arbitration system would be the application of CFC enforcement across multiple jurisdictions where the decisions of the multinational corporations would entail consistent enforcement and a better understanding of the law.

c. Imposition of Controlled Foreign Corporation rules in remaining countries

If any country has not laid down any Controlled Foreign Corporation (CFC) rules then they should be compelled to implement the same especially for the developing nations that are vulnerable to profit shifting to other countries. For such implementation, these developing nations could receive technical support, financing, and capacity-building training from the Organisation of Economic Corporation and Development (OECD) and the Group of Twenty (G20) to build frameworks on efficient CFC Rules. For the internationalisation of these CFC rules to occur, a model CFC rule framework proposal could be applied universally and may need to be developed. While this model may be advisable for all countries since it is understandable that certain economies and their administrative capabilities are not yet prepared to implement every single one of these CFC rules. This would make the coverage all round and not allow jurisdictions without CFC regulations to exploit the system[25].

d. Principle of full taxation

The policy of complete in-take wherein all income is taxed in some place or other can get advanced through improved global requirement of tax transparency and tax reporting. As part of this procedure, there should be a correlation between the Controlled Foreign Corporation (CFC) rules and other tax reporting criteria, including Country-by-country Reporting (CbCR) to determine how income is taxed either at the source level or at the residence level. The recent reform in the form of the Global Tax Deal that was discussed at the Organisation for Economic Cooperation and Development (OECD) aims to support CFC rules by ensuring multinational corporations (MNCs) cannot escape taxation on foreign earned income through low-tax jurisdictions[26]. By increasing the Global Minimum Tax (GMT) rate, the reform guarantees that a business will still be subject to a minimum effective tax rate of 15% as decided in Organisation for

Economic Cooperation and Development and Group of Twenty (OECD/G20) Framework on Base Erosion and Profit Shifting (BEPS), either in the parent company's home country or in the country where the subsidiary is located, even if company moves its profits to a jurisdiction with little or no taxation. Because the income will be taxed at a minimum level regardless of where it is reported, this principle effectively stops corporations from evading fair taxation by establishing subsidiaries in tax havens. This principle makes it impossible for CFC income to avoid fair taxation no matter where the income is reported. It strengthens international tax equity by removing chances for fictitious profit shifting and tax base erosion[27].

Conclusion

The practice of Base Erosion and Profit Shifting has shown all too many vulnerabilities in the international tax system that facilitate profit shifting and erosions of national tax bases by multinational corporations. While global initiatives in the form of Organisation for Economic Cooperation and Development's Base Erosion and Profit Shifting (OECD BEPS) project and Anti-Avoidance Rules (AAR) brought in a change in streamlining attacks on aggressive tax planning but actual implementation and jurisdictional inconsistencies are still scattered in places[28]. Therefore, the data sharing from countries worldwide will help international cooperation lead to an effective resolution as international cooperation is necessary including universal adoption of Controlled Foreign Corporation (CFC) rules, standardisation of tax principles and robust frameworks for data sharing. A Base Erosion and Profit Shifting (BEPS) agreement is going to mandate both a relentless and continuous push for transparency, legal reform and tax equity in ensuring tax obligations are paid where economic activities take place.

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CSR regulations in India - Opportunities and challenges

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India's CSR regulations are a new moral frontier in business, which reflect the ethos of sustainability and social justice that the nation has committed to. As economies become global, Indian corporations are facing increasing demands to solve social and ecological problems without compromising on profitability. However, CSR can lead to better brand image and patronage of customers among others. These challenges are poor sensitization of CSR practices, insufficient government regulation and oversight, and high difficulty in the monitoring and evaluation of corporate programmes. The regulations, originally included in the Companies Act of 2013, requires companies with average net profits to spend a minimum of 2% of their income on corporate social responsibility over the last three financial years.

Such a shift towards higher integrity is strongly visible in the way business is conducted in the country. Globalization has presented a new challenge to corporations for which they have to fight to solve social and environmental problems, whilst still keeping profit in mind. CSR can lead to a multitude of positive outcomes, including improved brand image and customer loyalty; nonetheless, there are many challenges that remain. Some of these challenges pertain to a lack of awareness among businesses on how to implement CSR effectively, limited government monitoring, a lack of accountability, and the difficulty of measuring the efficacy of corporate initiatives. In addition, disparities in the allocation of resources often benefit smaller entrepreneurs in fulfilling their CSR responsibilities.

CSR has more potential, it needs to be organized in a better way. This may require urgent improvement to the training of the enterprises on best practices for a more inclusive economic environment.

Definition of Corporate Social Responsibility (CSR)

Looking at CSR, the primary concern for businesses and society is coming up with some form of accountability for their activities to the society and the environment and is also much deeper than the issue of profit making. In recent years, the concept's penetration into the business practice in India has been quite phenomenal. More and more firms are adopting the policy in their operations. This trend particularly increased after the introduction of the Companies Act 2013, which applies to certain classes of companies requiring them to commit either a percentage of, or a specified amount, to CSR. Nonetheless, there are particular issues that arise when cheap multinational CSR is practiced in India, such as lawful guidance, instead of sustained change to real problems. As well, the focus on compliance may exacerbate the disconnection from the genuine intention of community and environmental work, which is really earning distrust from the stakeholders. Therefore, it cannot cause any changes by itself and the fact that it fails to realize the importance of building efficient communities where the organizations are based. Makes pursuing more projects and programs futile.

In India corporate social responsibility (CSR) rules recently came into effect which is a major change in the corporate mindset which focuses on bringing the social issues which have a genuine impact on other businesses. These regulations which were first laid down in the Companies Act of 2013, require companies with average net profits to spend at least 2% of their income on corporate social responsibility in the previous three fiscal years. This vision makes clear in this framework that laws have made socially responsible business practices a necessity; Most companies struggle to identify projects that help the needy, as they cannot easily justify why

they are choosing a specific project, leading to doubt in the honesty of their CSR efforts. Thus, more specific guidelines and oversight mechanisms that are meant to increase the transparency and accountability of fundraising organizations in the use of CSR funds seem extremely important to supplement these regulations. In India, CSR is regulated by the Companies Act, 2013, and a part of Indispensability (CSR) is an important component of governance, seeking to synchronize the practice of business with the needs of society. These regulations were first notified in the Companies Act of 2013, and require companies that meet certain financial thresholds to spend no less than two per cent of their average net profits made in the three years preceding the financial year, on CSR activities. Though this legislation framework uniquely brings connected social responsive business practices and measures, it has however some sort to develop further for compliance and to distribute CSR funds of region wise on equitable basis. In the end, it is difficult for a lot of corporations to point out decent projects that are of benefit to the disadvantaged communities and about the so-called CSR 'clockwork' and received criticism. The law, coupled with more specific and effective tracking mechanisms aimed at ensuring transparency and holding businesses accountable would help direct CSR funds into truly pressing social challenges in a more efficient manner. CSR is a tool of incredible significance for any developing economy.

Importance of CSR

Such initiatives can be an immense instrument in any developing economy, but in all fairness in a country like India wherein the need of the hour is to address so many social issues including those of environmental concern, CSR can work wonders. High social inequality and environmental issues demand a stricter CSR policy to protect sustainability and improve community participation. However, the implementation faces problems such as a lack of communication among the small firms and vague concerns

regarding the rules and regulations[1]. This might be achieved through differentiating between the centre and the periphery of operations and prioritizing training and resource allocation on the former. In addition, fewer rules will allow a clearer understanding of how to comply and will incentivize more corporations to practice CSR. These enhancements are critical as they can ensure better equity and more sustainable society for the concerned businesses and society.

CSR Regulations in India

Corporate Social Responsibility Policies (CSRP) in India are a byproduct of when companies were legally sanctioned to set aside a certain percentage of profits for CSR activities, one of the many developments during the raging movement involving corporates where CSR was made a different kettle of fish to what companies donated freely to or were responsible for. CSR projects will have to accept other components, if they are to come to the claimed goals.

Some example benefits include greater synergy between firms and the community, greater stakeholder inclusion in the design and implementation of initiatives, and increased investment in local capacity. India now has several key legislative initiatives providing a great foundation for developing the processes of social responsibilities in the operations of businesses. On the legal front, the only minor change comes from the Companies Act 2013, under which certain companies are now obliged to spend 2% of their profits. This blanket of laws that instituted a virtue of business philanthropy in the country. But whether the problems it helped to expose, such as the uncertainties around definitions of CSR and the almost impossible attempts to prove 'good faith' where it is needed, vainly seek for 'tokenistic' compliance, were covered similarly by this legislation. Following this later specific legislative frameworks in place, such as the Companies (Corporate Social Responsibility Policy) Rules, 2014, required a clearer definition regarding the scope of CSR activities.

Corporate Social Responsibility (CSR) comes in India in a legalized form because of the coming of Companies Act 2013 which give a legal obligation on some classes of companies to allocate part of its profits for social causes. This promotes the ethos of accountability and responsible engagement amongst the corporate sector. But the Act also points to a number of challenges.

Though progressive in many respects, it is only just beginning to address transparency on the part of many companies, and in practice corporate CSR strategy is still largely implemented as a compliance obligation to deliver on the meaningful impact you could make. Furthermore, there is a need to improve the criteria on which CSR spending is determined, as current laws might not have provided adequate incentives to truly reflect social contributions and community involvement. Until things are better from a corporate social responsibility perspective, a continuous dialogue and periodic review of policies can bring in CSR in India constantly changing its landscape, driving it in a direction where development can secure better acceptance from society in response.

India has made a player in the field of implementing Corporate Social Responsibility (CSR) regulations which it holds as a discipline not just in terms of adhering to Corporate Social Responsibility (CSR) but also as an activity that enhances brand name and brings its stakeholders closer together. Organizations will be able to build a loyal customer base that demands ethical behaviour. They also push companies to focus on solving immediate local challenges like poverty and education, making a more meaningful society. However, several businesses find it challenging to measure social impact and incorporate CSR initiative with the key thrust of the business. This hint should be giving support to take next course towards not left behind on CSR and the one with mentioned aware industry should raise a voice to government so that the rules for CSR should needs to take

place before the government can ask for the implementation of CSR as without any guidelines, implementing CSR will face the issues and therefore by bringing businesses needs to the at the very forefront of the sustainable development agenda, these challenge would be addressed by acclimatizing the businesses from the economic growth perspective along with the environmental consideration. It also establishes greater transparency on the reporting process and promotes trust between stakeholders that also may lead to a greater CSR commitment[2]. The tensional practical CSR laws in India should Get a Stronger Corporate Reputation on the one side and Higher Consumer Brand Loyalty on the other. An encouraging number of companies are engaging in socially responsible initiatives. It creates a sense of goodwill and good public reputation, appealing to today's socially aware customers who favour socially responsible firms.

Still, much more is yet to be done because corporate social responsibility activities need to be made more transparent, and the message about such activities has to be kept flowing; otherwise, people will start feeling that it is a case of greenwashing. However, varied customized solutions to these issues can eventually strengthen brand integrity and increase consumer trust in the brand. The issue above, as it pertains to CSR in India, poses a very tough test: how corporations manage CSR and to what extent it is a tool for creating impact and progress. So far, public opinion has been rebuilt. But trying to find a solution for making CSR policies is quite tough when problems are without a clear set of instructions. Organizations should, therefore, conduct needs assessments to increase their effectiveness and genuinely and transparently demonstrate commitment to community-based organizations to bring about change[3]. Specific goals have also been set to enable reporting that will empower social responsibility initiatives to benefit the community, thus making businesses agents of change. Such practices are likely to become normative in the near future. This may make the

communities focus more on the advantages of corporate social responsibility to both companies and individuals.

Recommendations for a better CSR system

One of the biggest hurdles CSR presents to India lies in the improper monitoring and enforcement mechanism. However, some of these concepts are designed to promote sound business practice and improve corporate governance and are not maturely developed, though in most areas and domains. Ignorance of the most recent advisory and overall ineffectiveness of the regulating authorities deny proper monitoring but draconian consequences of non-compliance go unpunished. Failure has also done heavy damage to the CSR activities' morale and shaken public trust of the corporate and the government agency. Such weaknesses have been highlighted, including inadequate training on the offer of the regulatory provision, plus integrating technology for reporting and verifying the input, and so forth. More training is then needed in regard to providing the said above offer of the regulatory provision, together with reporting and verification through input use of technology. The level of CSR engagement varies significantly with the economic sector, though the same variation brings consequences in terms of the implementation and outcome as a function of the economic sector. More CSR engagement is seen in the pharmaceutical sector and information technology since it is compulsory in most settings, and businesses have to be ethical with their customers. On the other hand, manufacturing and agriculture sectors require fast shifts because those sectors are characterized with slim profit margins and a notion of know-how of CSR activities. As such an imbalanced involvement leads to socio-economic disparities and rules out the loops to communities towards integrated development[4].

One of the problems is the interference of stakeholders as that business engagement with such groups ensures effectiveness in the implementation of CSR activities toward satisfying the communities' needs. Beyond that, collaborative

activities ensure confidence and trust in addition to enhanced effects and outcomes from social investment activities. The corporations which are capable of delivering such good CSR projects should be given tax exemptions by the government of India. This encourages competition in these activities. Moreover, the special reports about CSR activities in explicit and detailed forms enhance the scope of accountability and credibility. Moreover, the synergistic effect from the interaction between the business community, non-governmental organizations, and governmental agencies may be more effective as a collaborative approach to experience and resources sharing. All these strategic approaches facilitate the tremendous social changes in India, for which CSR contributes a great deal to the country's development. These should be in line with the socio-economic needs of the country, such issues as poverty, environmental pollution, and illiteracy percentage among many, as the context while formulating CSR policies and legislation in India. Accountability and transparency are sure to rise levels with time in progressions of CSR regulation development, wherein strong pressure would be there for companies to deliver on the promise made under current CSR legislation besides getting communities active. It would more favorably enhance the companies' performance in terms of adopting sustainable practices and profitable business for the long term. For instance, if CSR is integrated within strategically defined business processes, the optimal relationship will increase employment generation and societal well-being. However, issues like efficiently enforcing the mechanism and increased conflicting stakeholder interests are still open.

Conclusion

Much has been done but much more needs to be done. As found in this analysis of the CSR regulatory structures in India, there are challenges like companies need to adhere uniformly to the regulations, every company accepted the regulation differently, and there should be more accountability

on the reporting. The attention shifts more towards doing and compliance with the legal requirement to be an observer and implement CSR as a legal duty. In response to these challenges, the policymakers should promote small-scale businesses to engage in substantial CSR. Better rules and regulations regarding the usage of CSR management utilization of resources to the better people who fulfill stretch. Such changes, if India adopts them, will fulfill the internationally accepted standards of CSR and bring in the development accompanying responsible business. An analysis of CSR rules in India reveals the multi-dimensional relationship between the opportunities and threats of this regulation. This law gives incentives specific to businesses by requiring eligible businesses to dedicate a certain percentage of their profits to social initiatives, thus encouraging sustainable business models while solving pressing social issues in an effective manner. Though the progress realized in the design of these regulations is positive, challenges that have emerged in this process are vague guidelines and different mechanisms for enforcement. The failure to harmonize the establishment of compliance policies with authentic community interests elevates the superficial representation that an organization designates as a CSR initiative over the actual realization of its core values.

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Navigating Cross-Border Mergers in India: A Critical Analysis of the Tax Implications and Emerging Trends

By

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Abstract

The concept of a cross-border merger has found its foothold in India through a notification from the Ministry of Corporate Affairs, which validated cross- border mergers. This concept was later regulated by the Foreign Exchange Management (Cross Border Mergers) Regulations, 2017 on 20th March, 2018 and supported by various other regulations. Due to the emergence of globalization, India has been pushed to rethink and restructure its operations with respect to mergers and acquisitions. Although, cross border mergers, both inbound and outbound are relatively new concepts, there are various other parallel concepts that are affected and impacted by its emergence. Specifically, however, not limited to, tax regulations. This paper seeks to analyse the consequences that arise when a merger occurs especially with respect to the tax liabilities of the merged or acquired company. Due to these liabilities, there are certain burdens that are faced from the tax perspective. An analysis of the same, possible recommendations to resolve and ease the same is what this paper attempts to achieve.

Keywords

1. Inbound and outbound mergers
2. Cross-border mergers
3. DTAA
4. Transfer of shares
5. Double taxation

Statement of Problem

In an inbound or outbound merger any income that is generated oversees could be reallocated to the Indian Company in the form of interest, dividends, capital gains or any other form. Such income when accrued by the Indian Company via the foreign company or vis-versa is most likely to attract double taxation. The problem lies in the laws that regulate tax for companies involved in cross-border transactions. There are various regulations added to tax laws, that ensure that there are airtight anti-tax avoidance measures which add levels of complexity and clarity which can hinder the viability of possible cross-border mergers.

Research Objective

To critically examine the tax implications of cross-border mergers in India and analysing the various challenges within the regulatory framework.

Research Methodology

This paper uses the doctrinal method of research focusing on the legal principles generated by courts and has predominantly referred to primary sources, such as statutes, regulations, and guidelines. This paper has referred to secondary research which includes, relevant commentaries, reports, presentations and observation of jurists and experts in order to elucidate the arguments. The veracity of the literature referred to for the research has been verified and known to be true.

Introduction

Mergers and acquisitions act as a precursor of globalization[1]. The emergence of the era of globalization has resulted in the emergence of cross- border merger transactions, which although only recognized by regulations recently, has been existing since the 2000s. When the concept of foreign investments, took the world by storm, it instrumentalised the importance of coping with the evolution of globalization and the rapid need to keep up with the emerging trends in the economic market. However, when the concept of cross- border

mergers was regulated, it was identified that there were various aspects to be considered, and it depended on the regulations of not just a singular country.

Mergers and acquisitions are very intricate with different dimensions and they are attracted and governed by various laws and regulations simultaneously depending on the stakeholders and tax regimes involved[2]. Although there are various rules and regulations that grant benefits to M&A transactions, allowing for there to be deductions or deferrals of tax otherwise imposed, there are also certain countries that are not inclined in providing such benefits since, it would mean that there would be an exemption of the entire tax liability imposed. Even though, domestic combinations undergo certain issues, there are more complications when dealing with cross border mergers since there are policies and laws of multiple geographies involved.

The surge in cross- border mergers has alerted a looming need to manage the complex tax implications of this international expansion. At first glance, there is not a lack of tax concessions and statutory provisions relating to combinations in India, however, there is a need for there to be a consideration for the emerging concept of cross- border mergers that have rendered the economy to be in a position of strength and stability with respect to foreign involvement, expansion, leading to an overall improvement aiding the emergence of globalization.

Regulatory framework for Cross- Border Mergers in India

The FEMA Merger Regulations[3] define cross-border mergers to mean, "any merger, amalgamation or arrangement between an Indian company and foreign company in accordance with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 notified under the Companies Act, 2013" under which it has classified cross-border mergers into inbound and outbound mergers under Regulation 2. in case of an outbound merger, a resident individual may acquire or hold securities in the resultant company in accordance with the

limits of the Liberalized Remittance Scheme provided under the Foreign Exchange Management Act, 1992, as amended and regulations issued thereunder ("FEMA")[4]. Cross-Border mergers are a significant way in which a company can expand its operations by way of extending business overseas. This allows for the merged entity to have a larger user base therefore dominating in the relevant market. Prior to 2013, combinations of an Indian company with that of a foreign company was not permitted under the Companies Act, 1956. This Act defined "transferee company" to include companies incorporated in India and restricted the scope of cross border mergers[5]. However, after the amendment, Section 234 of the Companies Act, 2013[6] removed this restriction and made Chapter XV, which deals with Compromise, Arrangements and Amalgamations[7], extensively applicable to cross- border mergers. It is to be read with Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (Merger Rules)[8]. This rule permits companies incorporated overseas to merge with an Indian company by seeking prior approval of the Reserve Bank of India (RBI) and the National Company Law Tribunal (NCLT). Any merger which is undertaken in accordance with the FEMA Merger Regulations will be deemed to have prior approval of the RBI for the purpose of Rule 25A of the Companies Merger Rules provided the following conditions are met

Therefore, as seen from these provisions, a company that wishes to proceed with a cross-border merger is required to seek approval from the Reserve Bank of India[9] for any merger or amalgamation with a foreign company and file an application before the NCLT in accordance with Section 230 to 232 of the Companies Act[10] and the relevant Rules[11] including approval from the shareholders, creditors, tax authorities, etc[10]. However, there is a restriction as to when these mergers with foreign entities are allowed, and the jurisdiction is included in the Rules itself. This is due to the fact that there would be policy differences between various countries and to incorporate

laws that would regulate these mergers would require for there to be a similar public policy. One of the major components, when dealing with foreign entities is how each country's law would apply in either country. If there is no consonance with the two varied laws, a merger would only affect the laws of the two merging entities.

The foreign companies incorporated within the jurisdiction:

1. Whose securities regulator is a signatory to the International Organisation of Securities Commission's Multilateral Memorandum of Understanding (MoU) or has a bilateral MoU with the Securities Exchange Board of India (or)
2. Whose Central Bank is a member of the Bank for Internal Settlements (and)
3. Which has not been identified in the public statement of the Financial Action Task Force (FAFT) as:

a. A jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply, or
b. As a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed by the FAFT to address the deficiencies[12].

As under tax implications for a merger, the Income Tax Act, 1961[13] contains several provisions that deal with the taxation of different aspects of a merger. When we look at the classifications of mergers, we see that there are various ways in which a merger or an acquisition can occur. Therefore, there are different structures and one can assume that this would mean that the tax implications would vary based on that structure, and this assumption would be accurate. The average layman would assume that an M&A would include just that, a merger, or an acquisition. However, there are demergers, purchasing of shares of a target company by an acquirer, a slump sale and an asset sale, all of which, come under the

umbrella term M&A. All these transactions have various structures that the ITA[14] considers.

The current framework, although has expanded the scope of cross- border mergers in India, facilitating growth in consonance with globalization, still remains lacking in potency. When looking at the enforcement in practice, such framework has only been utilised for mergers between foreign, wholly owned subsidiaries and Indian holding companies. This has been due to the nature of conditions relating to RBI approval under the FEMA Merger Regulations[15] and the lack of clarity regarding demergers as under the provisions relating to mergers under the Companies Act[16]. The ITA[17] also has certain setbacks which will be analysed in detail.

Tax Implications of Cross- Border Mergers in India

In general, Section 47 exempts capital gains on transfer by shareholders when done in the course of an amalgamation where the shares of the amalgamating company is done to a shareholder in that of the amalgamating company. This was clarified by the High Court of Karnataka in ***Master Raghuveeer Trust***[18], wherein, it was held that during the process of amalgamation, shares held by a particular taxpayer in an amalgamating company, becomes valueless since when it becomes an amalgamated company, the amalgamating company, ceases to exist. In order to avail benefits under section 47 of the IT Act, the amalgamation has certain requisites to fulfil.

1. All the property of the amalgamating company or companies, immediately before the amalgamation should become the property of the amalgamated company, by virtue of the amalgamation;
2. All the liabilities of the amalgamating company or companies immediately before the amalgamation should become the liabilities of the amalgamated company by virtue of the amalgamation;
3. Shareholders holding not less than three-fourths in value of the shares in the amalgamating company or companies

(other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) should become shareholders of the amalgamated company by virtue of the amalgamation.[19]

Tax issues begin to creep in when there is more than one jurisdiction seeking to tax the same legal person causing the undesired effect of double taxation of that income. Most countries have identified double taxation as an issue and realises that it disincentivises companies from entering into international trade and activity. Therefore, countries enter into Double Taxation Avoidance Agreements to ensure that the legal persons' are not open to violation of their taxing rights. The availability of the benefits arising out of a DTAA drives and encourages, cross border transactions. When we look at the Indian tax law, we see that it is susceptible to change, and often this instability is resolved when a country that is a party to the cross-border merger signs a DTAA with the India.

With respect to the Income Tax Act, it provides a tax neutral treatment of inbound mergers. A merger, under the purview of the ITA is seen as that of a transfer as under Section 47 of the Act One of the key provisions under the FEMA Merger Regulations with respect to inbound mergers is that, in case of inbound mergers the issuance or transfer of an Indian company's securities to a person resident outside India must be in consonance with the conditions in the FEMA (Transfer of Security by a Person Resident outside India) Regulations, 2017. As per Section 47(vi), any capital gains arising from the transfer of assets by the amalgamating companies to the amalgamated company are exempted from tax if the resulting company (amalgamated company) is an Indian Company. These exemptions apply if the Indian company is the transferee company. Therefore, if there is an outbound merger, where the resulting company is a foreign entity, then the benefit of tax exemption is not applicable.

Also diverting the attention to Section 72A of the ITA[20], we see that it enables a company to carry forward or set off any of the accumulated losses that are vulnerable to tax, if certain conditions are met. However, if the foreign entity undergoes such losses, they would not be classified as an accumulated loss and therefore would not meet the criteria as under Section 72A and would not be absolved of any tax liability.

Given the constant change that the Tax laws of India are subject to, it becomes of imminent nature to ensure that suitable tax indemnity agreements are made, to ensure that there is no double taxation and any unnecessary litigation. Cross- border mergers are usually subject to indemnities due to the involvement of foreign entities. During the period of the 1922 Act's[21] regime, tax indemnities were negotiated for a period of 7 years. Post the Finance Act of 2021, the revised timeline for the issuance of notice for income became 4 years from the end of the financial year in which the transfer occurs. This can also be extended to 7 years which Investors may opt for to reduce the risk involved if there is any tax liability to be paid.

Impact of tax laws on cross-border mergers in India

An imminent case[22] that explains the notion of tax implications on mergers with foreign entities is one that revolves around two well renowned companies in the telecom sector. During the period of 1999, where there was a boom in the telecom industry, Hutchison Telecom International Limited formed a subsidiary company named Hutchison Essar Limited in India. Later, during the year 2007, a company named Vodafone International Ltd wanted to enter the Indian market. Therefore, Vodafone and Hutchison entered into an agreement wherein the 67% stake held would be transferred to Vodafone International Holdings which is the holding company of the Vodafone group. The Hutchison company would receive 11.1 billion dollars for this transaction.

At the time of this transaction, there was no laws that were set in stone regulating transactions of this nature. The

parties believed that, like the capital gains resulting from this transaction could not be taxed due to the fact that the two companies were non-residents and the transaction took place outside India. During this period no law existed to regulate mergers of such nature. However, the Indian Tax Authorities took note of this transaction and issued a show cause notice[23] to Vodafone Essar Ltd to show as to why they are not to be considered an assesse of Vodafone. The company moved to the Bombay High Court to challenge the action of the Income tax authorities.

The Bombay High Court came to the conclusion that the transactions between Hutchison Telecom International Limited and Vodafone International ltd involved a transfer of shares so as to determine control. It included not just a transfer of shares but also that of voting rights and other rights that attribute to capital assets[24]. The court made the observation that even though the transaction was not happening in India, since it involved Indian assets, the Indian Tax Authority can claim capital gains tax. The Bombay High Court therefore dismissed the petition filed by Vodafone.

However, when the case went before the Supreme court, it observed that the transfer of shares happened between two non-resident companies, having nothing to do with India. The Court held that Section 195 only applied to residents and did not have extra territorial jurisdiction.

Post the Supreme Court's Judgement, there was an introduction of the Finance Act 2012[25] which nullified the effect of the Supreme Court's judgement due to the amendments made to the sections under the ITA. Therefore, the parties went to the permanent court of arbitration and held there to be a violation under Article 4(1) which mentions equitable and fair treatment mentioned under the bilateral investment treaty. The tribunal, barred the State from imposing taxes on Vodafone International Holdings. In 2021 there was a new Finance Act[26] modifying the previous bill to amend the retrospective effect of the previous Act.

The tax structure should ensure that faith is created in foreign entities when they invest and choose to merge with Indian players to further the market. Retrospective taxation was a vital concept in this case, however, it also talks about the growth of the tax laws and how they evolved around the concept of cross-border mergers leading to the notion being instilled in the operating tax regime to include the concept.

Conclusion

In this paper, the tax implications on cross- border mergers has proven to have a complex structure tied together by tax regulations which are slowly evolving to adapt to the global emerging trends. This study shows that though India's tax laws protect domestic interests, fails to consider the challenges a foreign entity might undergo when seeking to collide with an Indian entity. Although it is seen that DTAAs relieve some of these challenges, it is also interesting to see how there are certain grey areas waiting to be explored. There are various factors that play into the happening of a merger, as seen in the above case laws. However, it cannot be denied that the existing tax regime attempts to ensure that tax liabilities are not unfairly imposed. This regime could further adapt to the changes that have emerged in the field of mergers, especially with respect to cross- border mergers since globalization has been in play for long enough. To adapt to these changes further regulatory frameworks would have to be put in place to encourage foreign entities to choose the Indian market to invest in so as to further our economy.

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Critical Analysis of J. Ks Puttaswamy Judgement

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Introduction

The judgement of Justice KS Puttaswamy vs Union of India is a landmark decision which changed the fabric of legal governance of privacy in India and made privacy a fundamental right under Article 21 of the constitution. The judgement led to increased understanding and much required focus on privacy laws in our country. In today's day and age, technological advancements have not only made our lives easier but also increased privacy concerns and data poaching. The decision paved the way for addressing these concerns in the context of modern India and ultimately led to the drafting and eventual passing of the DPDP Act. In 2025, DPDP Rules were drafted in consonance with the Act. Thus, The decision made a significant contribution to data privacy laws in our country and led our country to taking steps towards achieving privacy protection at par with international standards.

This research paper analyses the J. KS Puttaswamy judgement in the backdrop of the controversy of the Aadhar Act and the practicality of the judgement itself. The research paper also looks at the contention of both parties before the court and the reasoning of the court.

Statement of Problem

Privacy is an inherent need to be granted to every individual in order for civil society to function. It is an inalienable aspect of human existence that cannot be ignored. Throughout our legal jurisprudence up until the J. KS Puttaswamy judgement, right to privacy was only either implied recognized or held to be not a right. As a result, bodily

privacy and data privacy were not given primacy leading to legal problems and denial of legal protection of a crucial right.

The J. KS Puttaswamy changed the landscape of privacy rights in the country. The Supreme Court held Right to Privacy as a fundamental right within the meaning of Article 21 under Part III of the Constitution. It overruled previous judgements which has not recognized the said right and solidified the place of right to privacy in the Constitution in view of the wide interpretation frequently taken by courts of the Right to Life and Personal Liberty under Article 21 of the Constitution.

I would be delving into the judgement of J. KS Puttaswamy vs Union of India. Focusing on the concept of privacy as elucidated by judgement and the various concepts of the same, I would be undertaking a critical analysis of the judgement and would also the legal context of the filing of the infamous writ petition along with the contentions of both parties in this case.

Research Questions

1) What was the scope and extent of the recognition of the Right to Privacy as a fundamental in the judgement of Justice KS Puttaswamy vs Union of India
2) Whether the scope and extent of the Right to Privacy demarcated by the judgement have possible practical applicability and relevance

Research Objectives

1) To critically analyse the of judgement of J. KS Puttaswamy vs Union of India
2) To understand the context of the judgement and the opinions of the Justices with respect to the Right to Privacy and the concept of Privacy itself

Research Methodology

The methodology employed in this paper is doctrinal in nature. The paper primary focuses on the judgement of J. KS Puttaswamy vs UOI. Relevant legislations such as Aadhar Act were referred for the purpose of this research. The research itself is analytical and descriptive in nature which allows for

critical analysis of the judgement. Both primary and secondary sources were employed in this research such as research papers, articles and journals. Such sources form the basis of this research.

Limitations of the Paper

1) The paper is solely focused on the judgement and the implications of right to privacy from the judgement itself
2) The paper lacks real-time data and statistics and is purely theoretical
3) The critical analysis featured this author's own opinion of the judgement and its implications while also drawing from the opinions of authors' of other literature on this judgement

Background

Unique Identification of Families is a project which was started by the Government of India and a committee was set up for the same. The setting up of a database was suggested by the Committee in lieu of the project. In the month of January of 2009, the Planning Commission of India passed a notification on The Unique Identification Authority of India (UIDIA). Then, in 2010, the National Identification Authority of India Bill was passed. Retd Justice KS Puttaswamy and Mr Parvesh Sharma challenged the validity of Aadhar by way of filing a PIL writ petition before the Supreme Court. The Aadhar scheme was challenged as it was said to be violative of right to privacy. After the writ petition was filed, number of orders were passed. Then, The Aadhar Act of 2016 was passed which led to the filing of another writ petition challenging the vires of that Act. The two writ petitions were merged and treated as one. In order to maintain 'institutional integrity and judicial discipline' the case went to a five-judge bench which further referred the matter to a nine-judge bench and for a more qualified and informed decision on the right to privacy.[1]

Contention of the Parties

The Petitioners argued that: -

- By way of this Act the benefits and subsidies sought to be given might be excluded from being given.
- The Act may lead to infringement of many rights and liberties guaranteed by the Constitution of India to the citizens of this country by strict implementation of the same.
- The Aadhar Act's strict implementation could cause the country to devolve into a Surveillance state based on the information that would be collected from the citizens of the country.
- The Act imposes restrictions which go beyond the ones given under Article 19 of the Constitution of India. These restrictions are arbitrary and unreasonable. There is no nexus between the classification of society and the objective of the Act.
- The Aadhar Act allowed the government to track citizens and empowers the State to cancel the number of citizens which is provided in their Aadhar with no redressal.
- The Act takes away choice from citizens as the Act makes it mandatory to disclose information to the State to avail benefits and subsidies provided by the Government.
- The Aadhar Act does not fulfil the criteria of a Money Bill and hence cannot be considered the same.[2]

The Respondents argued that: -

- The intention behind the Act is to ensure that all citizens are able to avail the benefits and subsidies provided to them by the State and are excluded from the same
- The Act hardly asks for any sensitive personal information which could even create the possibility of an intrusive State.
- Section 2(k) of the Act categorically states that information related to race, religion, caste, ethnicity, language, income, records of entitlement pr medical history cannot be asked via this Act. So, the fact is the scope of information being collected is very limited and hence, non-invasive.

- The Aadhar is used as a form of identity card in use of over 92 Crore people and indispensable.
- The information collected by way of the Act is secure as it is encrypted at the very source and the biometrics of individuals are stored by the Government in secure servers.
- The first draft of The Personal Data Protection Bill, 2018 comprehensively addresses the utilization of personal data (collection, disclosure, share and processing in accordance to Europe's General Data Protection Protection Regulation (GDPR) and EU's data protection jurisprudence.
- The Draft Bill includes the obligations and rights of the data fiduciary and data controller clearly and talks about the role of the concept of consent.[3]

Judgement

The judgement itself spans 547 pages. It contains six different opinions and a several observations. The majority opinion, is the binding one on future cases. In the present case. J. Chadrachud has penned the plurality opinion, on behalf of four other judges (J. Kehar, J. Agarwal, J. Nazeer, and J. Chandrachud himself). The remaining five judges penned concurring opinions. Therefore, it is important to understand, that the 'plurality' opinion does not constitute the actual majority opinion as the opinion was not that of total five or more judges (not signed by five or more judges). The concurring opinion of the remaining judges are not binding either and cannot be set precedent in the decision of future cases. The actual binding part (operative part of the judgement) is the order that is signed by all nine judges.[4]

The Puttaswamy judgement overruled earlier judgements which had held that right to privacy is not a fundamental right. The judgement further relied on and upheld the cases where the ruling had stated there is a constitutionally protected right to privacy. [5]

The court held that right to privacy is a fundamental right under Article 21 of the Constitution; i.e., right to life and

personal liberty as guaranteed under Part III of the Constitution.

The Supreme Court further upheld the validity of the Aadhar Act but struck sown Section 33(2) and Section 57 of the Act. Section 33(2) allowed the disclosure in the interest of national security while Section 57 allowed private companies to use Aadhaar for identity verification and authentication for business purposes.[6]

It was also clarified in the ruling that informational privacy is not an absolute right is not and cannot be an absolute right and there will always be certain inevitable breaches of right to privacy when one exerts control over one's data.

Analysis

The standards of collection of data by the government were questioned in this case and challenged as being violated of being Article 21 of the Constitution. The major issues before the court were: (1) whether the Constitution recognizes a basic right to privacy (2) whether the Aadhar Act is unconstitutional.

The court stated in a nutshell the following characteristics of right to privacy:

(a) Right to privacy is a basic and alienable right
(b) All three of its meanings (spatial, autonomy, informational) are indispensable
(c) Right to privacy has both physical and mental elements
(d) Other than Article 21, several other articles encompass the right to privacy
(e) Lack of definitional clarity is not an acceptable excuse for not guaranteeing right to privacy
(f) Right to privacy is not reserved for the select few of the society but rather available to each and every individual in the country
(g) Right to Privacy can be both a common law right and a fundamental right

(h) This right safeguards both heterogeneity while simultaneously acknowledging plurality, taking into consideration the existing diversity in the country
(i) Right to privacy is essential to protect cultural and educational rights such as those under Article 29 (group with a distinctive language, culture or script have the right to protect the same)
(j) Even in public places, a person's right to privacy remains tethered to that person.
(k) State action is arbitrary if the action if such action violates personal space
(l) Right to privacy is necessary to realise the right to property under Article 300A
(m) Right to privacy includes right to forgotten, privacy of children, right to identification, right to control the broadcast of information
(n) Right to privacy does not extend to information that is already a part of the public domain.[7]

The Court also identified limitations to the right to privacy. It rightly pointed out that no fundamental right is or can be absolute. It is subject to reasonable restrictions. The standard of scrutiny would be as has been laid down in Article 19. To infringe this right, there are 3 conditions which have to be fulfilled which are : (a) Legality (b) A need (a specified goal of the state) (c) Proportionality. [8]

Additionally, the court stated that legitimate state interest must be established in order to justify the infringement of the right to privacy. State interests include National security, Data Mining, Crime Prevention, Protecting revenue interests, Regulation of digital platforms. Therefore, the court stuck a balance between right to privacy and State interests.[9]

Thus, the court covered a lot of ground when it came to the interpretation of the extent of the right to privacy. Not only constitutional recognition was guaranteed but also the scope and understanding of the right to privacy was broadened. Several various aspects and dimensions were included by the

Judges in the ruling. Further, the limitations were also mentioned for the right (as is the case for all fundamental rights. The judges also catered specially to this right to mentioning additional grounds of limitations in order to facilitate the exercise of the right with the administration of the State.

The court further looked into the interpretational Articles of the Constitution, i.e., Article 14 and Article 145. The court acknowledged the nature of Constitution as being dynamic and the need of the Constitution to evolve in different socio-political scenarios. The court recognizes the 'black matter' of the Constitution which alludes to interpretation beyond the actual laid down text. [10]

In the plurality opinion, the following types of privacy were listed:

a) Bodily privacy (control over one's body including movement of the person)
b) Spatial privacy (safeguarding of private spaces such as homes, family life etc.)
c) Communicational privacy (protecting personal communications)
d) Proprietary privacy (privacy in the use of property)
e) Intellectual privacy (freedom of forming thoughts)
f) Decisional privacy (freedom to make personal decisions)
g) Associational privacy (right to choose personal and professional relationships)
h) Behavioural privacy (control over one's behaviour as seen in public)
i) Informational privacy (right to control personal data and its dissemination)

As we see, the court strongly emphasized on individuality over State actions. It laid down the importance of privacy to ensure dignity, personal liberty and freedom of thought. The court extensively covered the various forms and facets of privacy as a concept which encompasses varied

aspects of an individual's life which included technological privacy. Such a progressive ruling ensures its relevance in future legal issues.

The court corrected previous judicial errors. The court overruled ADM Jabalpur and affirmed Justice Khanna's dissent. This reaffirmed that fundamental rights (except two) cannot be suspended during emergencies. The court also overruled the judgements of Kharak Singh (1954) and MP Sharma (1963).

In practical terms however, the extensivity of the scope of privacy is a problem. Ensuring so many different of facets of privacy and so broadly is extremely taxing from a bureaucratic standpoint.

Further, there still remains ambiguity in prevention of State overreach while exercising the limitation of right to privacy. Such overreach could happen in situations when invasion is disguised as governance.

There also appears to be acknowledgement of technological and informational privacy but there is weak prevention of digital surveillance (issues of mass surveillance, data retention etc). There was lack of more detailed discussions on data protection and robust legislation guidelines to address the same.

Also, the court laid down three-pronged test to determine when privacy can be invaded. But the test lacks proper implementation techniques in practicality which could weaken the protection of privacy at a practical level.

Conclusion

The J. KS Puttaswamy marked a massive historic shift in Constitutional jurisprudence due to its recognition of right to privacy in our country. The judgement enhances the extent of personal liberty in today's internet-driven times. Additionally, the court also overruled all previous rulings that had denied privacy its proper place in constitutional law. The Supreme Court gave a sturdy framework for future legal developments inclusive of data protection laws and defense against State's

interference, laying down privacy as an indispensable component of dignity and individual liberty.

The judgement also appropriately, balanced actual interests that the State can have with the rights of individuals to privacy and a three-pronged test (legality, necessity, proportionality) was developed for the consideration of the actuality of State interference with personal rights. It also laid down the definitions of privacy with respect to its various dimensions, such as, bodily, spatial, informational etc, to make it usable to varied arenas of life. In spite of its vast meaning, there are still many real practical challenges in avoiding governmental surveillance, applying data protection laws and upholding global privacy standards.

Although the judgement gave a proper theoretical base, it is vague how well it will really be in practice. Law such as the DPDP Act are good places to start, but problems with electronic surveillance, governmental interference and enforcement strategies remain. Again, the absence of robust infrastructural measures and data security and the lack of clarity regarding privacy laws indicate that more legal and policy changes are necessary. It is crucial for lawmakers, policy makers and judicial officers to work together to address these problems and create a comprehensive framework that is urgently required to meet global standards at a national level and protect privacy rights as can be done.

To conclude, the Puttaswamy verdict was a major decision that altered the nature of privacy in India. Nonetheless, its success or failure would be hinging on how minutely its principles are followed in making of legislations, further judicial decisions and everyday affairs and operations of the country. It also remains to be seen how these principles adjust and fare in such a diversity country like ours. The true test of the applicability of this judgement therefore lies, at how new threats are dealt with keeping in mind individual liberty and privacy which remain at the very heart of the Constitution of this country. The optimal privacy framework for a just and

balanced legal system is one that protects individual freedoms without risking national security or public interest.

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The Power Play of E-Commerce Giants: Investigating Amazon's Abuse of Market Dominance

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Abstract

The abstract gives an overview of Amazon as the leading player in the e-commerce competitive landscape globally concentrating on how it has altered competition, prices, and consumer information. It also indicates how some of Amazon's economic models and algorithms could be construed as anticompetitive, harming small businesses as well as the general marketplace. This part in addition should discuss Amazon's effects on price levels, barriers for entrance to the market, and potential tendencies for price making monopolies. This section finally observes the differences in geographic scope of competition policy regulation in the U.S., EU, and India, and how these developments affect the competition policy for the digital space in future.

Keywords: Amazon, market dominance, e-commerce, competition law, anti-competitive practices, regulatory frameworks.

Statement of Problem

Barriers to entry for smaller and newer players in the market are greatly influenced by Amazon's domination in online retailing. Its stratagems on pricing policies, control of information and positioning of products lead to a situation where third-party vendors are not well known to the customers, thus reducing their choice and exacerbating issues of competition. Due to the scale of the platform, it is clear that existing anti-trust laws can hardly cover the dynamic and prolific nature of the business that is Amazon. This study examines the extent to which existing regulatory measures restrain the growth of Amazon's power or whether there is a

need for more elaborate existing legislation, especially in relation to Amazon's data practices, the issue of self-preferencing, and the effects on distribution chains around the world.

Research Objective

1. Examine Market Dominance

The growth of Amazon into a powerful corporation is due to the proactive and well-planned design of a business model that places emphasis on customer satisfaction, operational effectiveness, and acquisition of other companies. The inception of services like the Amazon web services (AWS) and the takeovers of companies like Whole foods and Zappos, among others, have made Amazon diversify into a number of areas, which in turn has helped enhance its market power greatly. Amazon has been able to draw a very large clientele due to its huge variety, low prices and fast service, which in turn has resulted in potential competitors having to face very high entry barriers.

2. Analyze Business Practices

The business model adopted by Amazon, especially in terms of data usage, the ranking of various products, and pricing mechanisms, has prompted concerns about its potential abuse of market power. With massive amounts of data about consumers and sellers alike, Amazon seeks to enhance its product and pricing strategies, which may put third-party vendors at a disadvantage.

3. Assess Global Regulatory Measures

Different regions are developing regulatory regimes to mitigate concerns regarding market power in digital economies, with the example of Amazon often being used. The European Union for instance enforces restrictive policies on competition and heavy fines for infringements and imposed restrictions on Amazon's business activities, whereas the recent developments in the US included proposed antitrust laws and their enforcement against the technology giants. Countries such as India on the other hand embrace the regulation and

control of e-commerce by e-commerce based platforms like amazon.com.

Research Methodology

The approach applies a qualitative framework to investigate the activities of Amazon.

1. Literature Review: Examining scholarly articles, business reports, and case studies regarding the monopolistic tendencies of Amazon and its impact on the intercontinental commerce.
2. Case Studies: Well-researched examination of case laws from the United States, EU and India, analyzing the impact of such a business model on the local markets.
3. Comparative Analysis: Evaluation of competition law and its enforcement in different regions of the world carrying out investigations with a view of proving the regulatory variance in the regions.
4. Doctrinal Analysis: Look into the tenets of competition law with particular attention to digital monopolies and existing definitions on dominant conduct and limits.

Introduction

The evolution of Amazon from an online book selling company to a global e-commerce giant, is a perfect example of strategies adopted for growth in the digital age.[1] By reaping the benefits of fast growth, wide range of products, and low prices offered to its customers, Amazon built up a well-oiled industry comprising e commerce, transport and even cloud services. Initiatives such as Amazon Prime Membership, its grip on data and search algorithms, have established Amazon as the one stop shop for both the buyers and the sellers.[2] This has however, raised alarm from the small-scale businesses who insist that the approach taken by Amazon – where Amazon.com promotes its own brands for instance, and discounts all other competitors, raises them out of the market – is anti-competitive. Consequently, regulators in different countries have begun looking into the activities of Amazon and

considering if any of these activities can be regarded as anti-competitive behaviour.

This study illustrates the evolution of Amazon's market position and assesses whether the practices it employs can be rightly construed as market exploitation. Furthermore, it assesses the responses to Amazon's behaviour in different countries and points to the need for changes in the existing policies, considering the current realities. Thus, this research purports to address the issue of how market power can be exercised and how competition can be preserved in contemporary digital markets.

Understanding Market Dominance in E-Commerce

The supremacy of Amazon in the world of online shopping, however, is more than just the share of the market.[3] It is the whole ecosystem of the business itself which fits in everything from the supply chain, data management and even cloud computing. While other retailers outsource certain things like shipping or data analysis, Amazon has built its own end-to-end systems. It takes care of warehousing and distribution through Amazon Fulfillment and as a result offers efficient and speedy service that boosts customer's satisfaction.[4] In addition, Amazon Web Services (AWS) has grown into the biggest cloud services provider and not only meets the internal demands of Amazon's operations but also contributes an impressive share to the company's earnings enabling the corporation to enhance funding of its retail segment and thus, more cutthroat pricing.[5]

Additionally, Amazon's capability to extract additional value and analyze data provided by consumers and sellers on its website helps it gauge demand, meet supply, and alter algorithms to sway their audience into buying its goods.[6] Such use of data is fundamentally what gives Amazon its competitive advantage especially in pushing its store brand products while downplaying third-party products and this has been called abuse of dominance.[7] More so, the wide variety of choices coupled with Amazon's cost-effective approach to

business serve to entice customers which creates a network effect where more buyers lead to more sellers and the opposite is true further strengthening Amazon as the primary online market.[8] This part examines Amazon's infrastructure, pricing and operational policies and this explains how these factors lead to the creation of a dominance that limits competitors on price, delivery and their ability to penetrate the market.[9] Put simply, Amazon's circular model increases its hold over the market while at the same time it shrinks the space for competition.

Amazon's Competitive Strategies and Potential for Abuse

Amazon utilizes competitive strategies that may be considered abusive in nature such as:

- Pricing policy: It is alleged that Amazon has engages in below-cost pricing of its goods and services to eliminate competition from smaller rivals selling identical goods. This practice reduces the threats of fresh competitors penetrating the market and sustains Amazons monopoly over the market even after competitors have been eliminated.
- Self-preferencing: Amazon's activities consist of listing products on its platform by other retailers as well as offering its own range of products. It is also reported that Amazon uses its power over the search to suppress other sellers' products and increase sales of its own products which, in turn, harms other brands.
- Data collection and management: In addition to sales understanding, the Company benefits from the information that it gathers concerning the various consumers' preferences. This in turn makes it possible for the company to get the market's approval and then turn around and produce the same products at its own label. This has raised issues of concern especially when Amazon is looking at competing against its retailers' best practicing sellers through data on how well the product is selling.

Global Regulatory Responses to Amazon's Practices

US Approach

In the last few months, the Federal Trade Commission and the Department of Justice have become more active in monitoring Amazon, especially regarding its market power in various sectors, predominantly digital sectors.[10] Historically, it can be noted that the U.S. antitrust policy has been more forgiving of monopolies and approved mergers that led to greater concentration, with the belief that competition would be sustained by the prevailing market forces.[11] The Federal Trade Commission has barely started a few investigations on the practices of Amazon while there allegations there of using its market power for the exclusion of other smaller players in the game.[12] The recently put forward antitrust proposals including The American Innovation and Choice Online Act seek to curb self-preferencing and ensure accountability and privacy practice among the technology firms.[13] This discusses the strengths and weaknesses of the US antitrust statutes adopted in the solution of the problems presented by digital monopolies and analyses how the new laws may influence competition within the tech industries.[14]

U.S. antitrust law structure is also to a large extent the Sherman antitrust Act and the Federal Trade Commission Act. These laws are however with less granularity compared to the competition law in the EU. Section 2 of the Sherman Act addresses the concept of monopolization, though more often, it has concentrated on the adverse effects of monopoly on consumers in form of price increase.

EU Approach

In recent years, the European Commission (EC) has taken a stronger approach by intervening and actively applying competition rules and data protection laws against technology companies such as Amazon.[15] For instance, the General Data Protection Regulation (GDPR) has imposed stringent restrictions on data protection and privacy, thus impacting on the manner in which Amazon gathers and processes data it purchases from other companies.[16] In 2020, the European Commission started an inquiry into the practices of Amazon

relating to data harvested from third parties and the accused instances of product self-preferencing by Amazon over its 3rd party vendors.[17] This prompted regulation which seeks to prevent Amazon from using data related to sellers to gain an unfair competitive edge as well as requiring that the actual product ranking mechanisms be revealed.[18]

The European Union draws on Article 102 of the Treaty on the Functioning of the European Union (TFEU) which reigns over the abuse of a dominant positioning in the market.[19] In particular, Article 102 prohibits abuse of attempts to monopolize and includes such practices as predatory price cuts, refusal to deal, and exclusionary practices against rivals. The competition law adopted by the EU aims at curbing the practice of such anti-competitive behavior to the extent of consumer welfare hostile market barriers that firms are tempted to engage in.[20]

Indian Approach

The regulatory approach adopted by India in this instance, beginning with the Competition Commission of India (CCI), brings out the distinct challenges that Amazon creates in developing markets where smaller local players are outmatched by the scale and resources of the platform.[21] The CCI has already initiated probes into allegations that Amazon has engaged in predatory pricing and the preferential treatment of certain sellers that claim gives Amazon an unfair edge over smaller indigenous players.[22] In a competitive environment where a significant portion of consumers is conscious of price, expending a great deal of concern on this issue geared towards Amazon especially in terms of more direct pricing and exclusivity concern.[23] It assesses the impact of such policies in India and the way the regulation change should assist local enterprises cognizant of the need to make sure that prices and variety of products available to customers on digital markets do not suffer excessive restriction.[24]

The Indian Competition Act, which came into effect in 2002, turns to statutory provisions to check all forms of anti-

competitive behavior, including the abuse of dominant position.[25] While recognizing the problems posed by the digital platforms, the latest of the amendments to the Competition Act have attempted to bring the Indian standards up to date including provisions ay which leverage significant market power of digital platforms even when there is no such traditional dominance.[26]

Recommendations for Strengthening Competition in Digital Markets

To ensure fair competition and efficient utilization of market power, the document makes the following suggestions to overcome the problem:

1. Access to Algorithms: Suggest that clients of Amazon should be able to access more than basic information about the ads algorithm, ranking algorithm, etc.[27] By doing this, small businesses will know how to compete with the monopolist in search and recommendations – revealing the drivers of prioritization in the processes will provide them insight on how to enhance their presence on the platform. This kind of understanding will also counter unfair bias against third-party sellers who do not carry the retailer's proprietary brand so that all brand owners are treated similarly.[28]

2. Data Ocean Restrictions: Utilize new product data from the third-party seller database with limitations. Most importantly, it limits improper use of remaining sellers' sensitive information such as other sellers' estimated sales velocities and targets' rates while interacting in the same channel. Such data access provides Amazon an advantage of acting on insight which factors in all aspects including competitors.[29]

3. Avoiding Self-Preferencing: Governing bodies must formulate and enforce laws that will restrict the extent to which Amazon can marginalize competitors by favoring its own brands and services as opposed to those of other sellers on the platform.[30] In turn, this can reduce the range of products available for purchase by consumers while also limiting competition in the marketplace. However, through operational

constraints on the extent of this self-preferencing, these regulatory bodies will aid in ensuring that a wide spectrum of products.[31]

4. Collective Global Governance: Given that Amazon operates internationally, it becomes imperative for global regulatory organizations to synchronize their strategies towards digital market regulation. In this regard, it has been noted that the EU, the U.S. and India have varied reactions with respect to Amazon's operations, thus establishing some common international regulations would be useful within the context of stakeholder policy development.[32] It is likely that this would ensure much improved and more effective compliance with and enforcement of competition law internationally to protect healthy competitions without enabling Amazon and such companies' use of loopholes in regulatory barriers within markets.[33]

By putting into practice these recommendations, regulatory authorities should manage to mitigate some of the competitive threats posed by amazon and other such digital companies, while at the same time maintaining a healthy balance in the market that encourages innovation, customer choice and healthy competition in the digital economy.

Conclusion

The astonishing expansion of Amazon and other e-commerce empires has accentuated the inadequacies of existing regulatory systems that were mostly conceived in the context of previous conventional markets.[34] As the market power of Amazon increases, so does the urgency for the appropriate regulation of such market power in a way that encourages competition. In order to cater to the specifics of the digital markets in general and digital commercial platforms in particular, the politicians have to emphasize the legislations of clear rules, that eliminate unfair competition and develop the idea of these instruments as enabling markets not suppressing them.[35] Competition policy, especially in digital markets, should be reinforced. The focus of the policies should be on

the transparency of the way algorithms and data are used, so that they do not allow corporate entities such as Amazon to sell out its products by use of its platform at the expense of its competitors, or misuse sensitive information belonging to third parties in order to undermine smaller players

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Impacts of Illegal, Unreported and Unregulated (IUU) Fishing on Marine Ecosystems and its Security Threat in India

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Abstract:

The global marine ecosystem faces one of its most alarming challenges in the form of Illegal, Unreported and Unregulated (IUU) fishing that is devastating biodiversity and destabilising economies, leading to implications for national security, particularly to coastal nations such as India. The paper examines the multidimensional effects of IUU on marine ecology in India as well as its wider implications as a security threat. By removing significant quantities of fish, breaking coral reefs and rearranging species compositions, IUU fishing unlocks a domino effect that destroys the fragile balance marine ecosystems require to function, resulting in irreversible biodiversity losses. They noted that with its long coastline and Exclusive Economic Zone (EEZ), India is particularly susceptible to IUU fishing. The Indian Ocean region is now quite the hub for illegal fishing (mostly, imported vessels) because there is not much surveillance and monitoring capability being implemented.

Foreign fishing vessels, and their activities in Indian waters threaten the maritime sovereignty of India as well as territorial integrity. While IUU fishing is a legitimate concern in India's EEZ, uncontrolled poaching creates a blue hole for transnational crime by foreign actors to exploit marine resources while undermining Indian maritime rights and also provides entry points for smuggling, human trafficking etc. IUU fishing is not only an ecological issue; it is a border security problem that begs a unified policy response. This paper emphasizes the need to adopt a holistic approach towards IUU fishing. This is where regional cooperation,

surveillance, even a satellite tracking system and an automatic identification system (AIS) become vital. Maintaining legal structures and solid enforcement instruments will discourage malpractice while providing India with dual security, first by preventing the further depletion of marine biodiversity and second by strengthening its economic bottom-line.

Keywords: Fisheries Crimes, IUU Fishing, National Security, Maritime Security, India, Environmental Policy, International Law, Regional Cooperation.

Statement of the research problem:

IUU fishing presents serious threats to both marine ecosystems as well as national security for India. The generation of marine litter damages biodiversity, promotes overfishing and endangers fish species at risk, leading to disruption of the ecological equilibrium throughout our seas and the erosion of livelihoods for coastal communities whose fishing practice for subsistence or economic purpose is affected. IUU fishing is taking fish from the ocean more quickly than they can reproduce and threatening food security for millions. Secondly, the proliferation of IUU fishermen is generally associated with transnational organized crime including piracy and trafficking that heightens security threats to India in its maritime frontiers.

The study will explore the prevalence of IUU fishing in India, its ecological consequences for marine biodiversity and related security risks including status of policy implementation and enforcement. It also seeks to promote technological and regulatory solutions for monitoring and preventing illegal, unreported and unregulated (IUU) fishing. This will strengthen policy frameworks for sustainable marine resource management and national security interest protection in waters surrounding India.

Research Objectives:

1. Whether IUU fishing, Whether IUU fishing, poaching and trafficking are non-traditional security threats as demonstrated in the case of India?

2. Whether address of fisheries crimes in respective Exclusive Economic Zones (EEZs) are effective in India?
3. Whether judicial frameworks are effective enough to deal with fisheries crimes?

Research Methodology:

It is a qualitative study, these include government reports & stats about them. The secondary data will be gathered from scholarly works, policy briefs and international organisation reports. This will be implemented in India to analyse fisheries crimes on the above dimensions. This analytical and scope of fishery crimes, as economic damage and environmental effects. The national security dimensions of these crimes, particularly in terms of sovereignty, stability and maritime governance at the regional level. The enforcement of fisheries legislation and prevention, including legal frameworks as well as international cooperation.

Introduction:

Much of the maritime domain in the Indo-Pacific will likely be affected by IUU fishing vessels, owners, operators and nations with disproportionate risks to safety and security. The on-going high fishery pressure will also only continue over exploiting fisheries resources and leading to either stock collapses of a few highly migratory or international fish stocks.[1] The lack of maritime security that exists across many EEZs currently will be even more pronounced allowing distant water fishing fleets freer movement and scope to harvest seafood illegally. This brings us to think that maritime nations should be on the lookout for more irregular migration of people, human slavery as well as drug and weapon trafficking using commercial fishing vessels of all types and size.[2] Security of the seas is an integral part of national sovereignty. Claiming, governing, and enforcing laws in the exclusive economic zone (EEZ) of a country is essential to the environmental, economic and geopolitical security of maritime countries.[3]

Since the 1982 Law of the Sea Convention (commonly referenced as UNCLOS), maritime nations could legally declare fishing resources exclusive economic zones to a distance of 200 nautical miles from their baseline (approximate coastline). Many states simply do not have the wherewithal to survey and then police their own exclusive economic zones (EEZ), so these areas are typically high-risk targets for IUU fishing activities. The degradation of environmental habitat and natural resources can result in economic and food security problems for human populations, thereby contributing to maritime crime, including piracy. Making law, policy and judicial system efficient across the board is one part backed by military and police activity able to regulate activity in the maritime domain is a formidable combination of efforts. To face this non-traditional threat due to IUU fishing, maritime nations must look inside themselves and see the extended multi-pronged threat which such an activity poses.

In a context where an estimated 50 percent of the world depends on fish as their major source of protein and where overall marine fish catches have remained at around 80 to 90 million tons per year since the early 1990s, with many important fisheries now over-fished or degraded by overfishing. Impacts of Overfishing: A Food Security Perspective.[4] NGOs have played a crucial role in generating awareness and enhancing local capacity. This means establishing marine protected areas (MPAs) and providing other livelihoods for fishing communities in the hopes of creating a "trickle-up" effect, discouraging illegal fishing.

1. Impact of IUU Fishing on Marine Biodiversity.

United Nations Food and Agriculture Organization (UNFAO) estimates that 17 percent of the human population live mainly on fish flesh as their source of animal protein. In some countries and regions reliance on fish protein is even more pronounced. As global economies begin to grow, it is only going to be a matter of time before the demand for fish increases. With so much of the planet bouncing into the middle

class (and thus cash for new food), demand for seafood will rightly continue to grow.[5] Illegal, unregulated and unreported fishing (IUU fishing) is a serious transnational crime issue that results in profound economic, social and environmental impacts. Ecosystem sustainability use is a principal challenge. For fisheries, illegal, unregulated and unreported (IUU) fishing represents a key challenge to sustainability around the world. The fishing of some species in the Southern Ocean has been described as a type of highly organized, transnational crime.[6] Organized crime is a non-military national security issue. This does not endanger threaten survival of the state, but will take a toll on its quality and identity.

IUU fishing brings also heavy economic and social losses. Global non-compliance with fishing regulations (illegal, unregulated, and unreported or IUU fishing) is estimated to lead to losses in excess of $10–23 billion per year.[7] According to estimates, an average of 850 foreign owned vessels fish in Somali waters without a licence each year. This is responsible for approximately $250–350 million of fish and seafood every year.

Although there is no widespread definition for international organized crime, the United Nations Office on Drugs and Crimes defined it as a serious crime that takes place between three or more people acting in coordination to profit. The UNODC provided examples of TOC: drug trafficking, human trafficking, smuggling of migrants, illicit trade in firearms, land and natural resources related crime, including but not limited to illegal mining for and illegal logging of timber based on the fact that both types of resource extraction directly correlate with the occurrence or escalation of socio-political conflicts, wildlife crime, the sale or marketing of counterfeit medical products uncertainty and cybercrime against individuals corporate data procurement.[8] IUU fishing is frequently coincident and involved in the same networks as other TOC actions. This ranges from the use of similar pathways for transporting illicit goods, such as drugs and fish

caught via IUU practices, resort to fishing vessels to hide smuggling faring, and even enlistment of marginalized fishermen in criminal assistance.

2. Socioeconomic Consequences of IUU Fishing on Coastal Communities in India

These all above mentioned over exploitation and indiscriminate use of these resources ultimately lead to irreversible environmental degradation, which brings about severe damaging changes in the life styles of human beings, plants animals and other living organism. With regard to social harms, the presence of IUU fishing activities can displace genuine fishers due to the low cost nature of this practice resulting in unfair competition against legitimate operators. This may also drive even regular fishers to resort to IUU fishing themselves just to stay in business. The decreasing fish stocks is due to illegal, unreported and unregulated (IUU) fishing which also cripples legitimate fishermen, their source of income. Spending more time on unsustainable fishing practices, the reduced fish catch may result in lower employment and lower household incomes that contribute to increasing level of poverty which is especially evident within coastal and artisanal fishers.[9]

These illegality arose from violating the fishery laws and regulations at different levels (national, regional, and global) constantly. The illegal fishing practice of IUU is a criminal act against the legal order. IUU fishing actors are sophisticated, highly organised and often operate with advanced technology and a global network. This often involves working with corrupt law enforcement officials to escape the scope of applicable laws and regulations, and to exploit the inadequate regulation and enforcement found in many nations.[10]

3. The Impact of IUU Fishing in National Security Risks and Maritime Sovereignty

The Indian Ocean has been home to the long contemplated phenomenon of irregular migration that is, movement taking place outside any regulations or state

practices established to facilitate well-ordered entry. Migrant smuggling and trafficking in persons are forms of irregular migration. The IOR has been particularly prone to human trafficking. The ILO estimates that at least 2.45 million people are victims of human trafficking, out of which 1.36 million were in Asia and the Pacific.[11] Countries of the eastern IOR in particular, Southeast Asia have long been long associated with human trafficking, crimes involving enormous transfers of people into forced labour.

Geopolitical tensions, often stemming from food or economic insecurity, represent another threat linked to IUU fishing. Increased tensions fester within or between nations due to ecosystems collapsing, competing resource demands and competition especially in nations that are significantly reliant on fisheries for nutrition - both food security and economic livelihoods.[12]

4. Legal and Policy Framework Addressing IUU Fishing in India

Five international fisheries instruments can be tested at a global level having features of substantive divergent policies, legal framework and practices at national level against IUU fishing. For example, the UNCLOS, the Compliance Agreement, the UNFSA, the IPOA-IUU and the PSMA. International fisheries instruments are crafted so as to provide states with a considerable margin of discretion in terms of formulating and applying their regulatory and enforcement designs and practices. States vary widely in the types of regulatory and enforcement systems and measures employed, from a simple administrative fine with little or no deterrent effect, civil sanctions to imprisonment.[13]

Weak institutional and enforcement regimes over maritime limits do not only encourage the practice of IUU fishing, but also combine to make additional illegal or unwanted at sea behaviour such as piracy possible. On the one hand, illegal fishing has been associated with other crimes perceived more likely to destabilize coastal communities.

Whereas unreported and unregulated fishery activities are most often not in similar fashion directly to acute threats such as transnational organized crime.[14]

Realization of the need to protect and improve human environment for the wellbeing of people and economic development worldwide encouraged United Nations on its Conference on the Human Environment held at Stockholm in 1972. Abstract the relationship between environment and development is not expressly conceptualised in the Constitution of India. But looking into the substance of Chapter on Directive Principles of State Policy and Fundamental Duties in it, it has given guidance for possible path development may take and also maintains protection and enhancement of environment.

There is an Indian Ocean Tuna Commission that should limit the exploitation of highly migratory stocks but in practice this is rendered unfit for purpose. Since then, there is no regional or sub-regional mechanism to curb the menace of IUU fishing and maritime encroachment in IORs. The Southern Indian Ocean Fisheries Agreement (SIOFA) is intended to encompass non-tuna fishery resources, which is not yet in force.[15] A large part of maritime intrusions in South Asia is attributed to neither boundary markers nor navigational aids for small fishermen. Countries, especially in South Asia, have faced this diplomatic impasse due to one state responding the way a state usually does arresting and enough with detaining. Both Pakistani and Indian law stipulates a maximum punishment of three months in jail and $12 fine for the offence of crossing illegally into the other's territorial waters. In practice, though, both countries send fishermen to jail for a year or longer.[16]

5. Technological and Strategic Solutions for Monitoring and Preventing IUU Fishing in India

Technological and strategic solutions are needs of the hour to curb Illegal, Unreported, and Unregulated (IUU) fishing in India. Satellite based monitoring and also the Vessel

Monitoring Systems (VMS) identifies fishing vessels at real time, thus unauthorized or suspicious activity within Indian exclusive economic zone are detected. Drones and unmanned aerial vehicles (UAVs) robotics, for coastal surveillance by Indian coast guard and fisheries departments as it can help efficiently cover vast stretches of the coast. Incorporating Automatic Identification System (AIS) with Artificial Intelligence will provide enhanced identification of vessels and reduce response times for violations.

In strategic terms, India further short term could build regional synergies with its neighbours to share data, which would improve monitoring of IUU vessels as they cross borders. Emphasis on stricter deterrence splash operators must face a more severe sanction for IUU activity, this safeguard can be strengthened through better established legal frameworks. Educating local populations and fishermen about sustainable practices as well involving them in community-based monitoring can add a layer of grassroots protection against illegal activities. Apart from that, public and private partnerships for funding and technological innovation can help develop sustainable solutions to protect marine biodiversity and fisheries in India.

Conclusion and suggestions

India is also facing the threat of Illegal, unreported and unregulated (IUU) fishing which poses a serious threat to her marine ecosystem as well as national security. Ecologically, IUU fishing plays disrupts with marine biodiversity by removing fish stocks above sustainable levels that aim to maintain food chains and degrade important habitats such as coral reefs and mangroves. These ecosystems play an essential role in biodiversity conservation and coastal protection, but their deterioration leads to adverse impacts on marine life, local fishers and the wider environment. Overfishing poses a further threat to food security for millions of people who rely on fish for protein and risks the economic stability of entire coastal regions.

IUU fishing adds to the complexity of maritime security situation for India from a security perspective. These unregulated vessels can be a facade for other criminal activities like smuggling and trafficking which have proven to be very challenging for India in its efforts of maritime security. This absence of transparency and figures for illegal fishing severely limits the ability to conduct successful maritime law enforcement.

Dealing with IUU fishing needs a comprehensive approach, which includes technical surveillance, legal reforms and international collaboration. Sustainable management of marine resources and protection of the coastal waters off India requires better monitoring, most effectively with the assistance of satellite technology, stricter laws that are properly enforced, and strategic alliances with neighbouring countries. The protection of marine ecosystem from IUU fishing will therefore be essential in preserving the biodiversity and the livelihoods associated with this natural capital that can both contribute to national security and long-term stability, ecological and key geopolitical respectively.

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The Legal and Ethical Implications of Digital Piracy: A Study of Copyright, Morality, and the Indian Film Industry

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Abstract

The rapid advancement of technology has significantly transformed criminal investigations, equipping law enforcement agencies with sophisticated tools to detect, analyze, and prevent crimes. Technologies such as artificial intelligence, digital forensics, biometric authentication, and surveillance systems have enhanced policing efficiency while raising significant ethical and legal concerns. The widespread use of these tools has led to debates regarding their implications on privacy, data security, and civil liberties. This research delves into the role of technology in criminal investigations, exploring its benefits and challenges. It highlights key judicial precedents, legal frameworks, and policy considerations while emphasizing the need for a balanced approach that upholds public safety and individual rights. Through an analysis of case laws and regulatory frameworks, this study aims to provide insights into how law enforcement can responsibly integrate technology while maintaining transparency, accountability, and adherence to fundamental human rights.

Keywords: Criminal investigations; Digital forensics; Artificial Intelligence; Biometric Authentication; Surveillance; Privacy Rights; Law enforcement; Legal frameworks; Ethical concerns; Data Protection.

Statement of Problems

The increasing reliance on technology in criminal investigations has raised significant challenges related to privacy, legal oversight, and ethical considerations. While surveillance technologies, AI-driven analytics, and digital forensic tools enhance crime detection and investigation efficiency, they also present the risk of mass surveillance, data misuse, and wrongful convictions due to biases in algorithmic decision-making. Existing laws governing surveillance and digital evidence often lag behind technological advancements, leading to regulatory oversight and accountability gaps. The absence of uniform global standards on data protection further exacerbates concerns about cross-border information sharing and the potential abuse of surveillance powers. This study seeks to address these issues by examining the legal, ethical, and policy implications of technological interventions in law enforcement. It aims to identify the key challenges faced in balancing security needs with privacy rights and propose recommendations for a more responsible and transparent technology integration in criminal justice systems.

Research Objectives

This research aims to analyze the role of technology in modern criminal investigations while assessing its legal and ethical implications. It seeks to explore the benefits and risks associated with digital forensics, AI-driven predictive policing, biometric identification, and surveillance mechanisms. Additionally, the study aims to examine judicial decisions and legislative frameworks that govern the use of technology in law enforcement, both nationally and internationally. By identifying regulatory gaps and ethical dilemmas, this study intends to offer policy recommendations to ensure the responsible use of technological tools in criminal justice systems. Furthermore, it aims to evaluate the effectiveness of existing legal safeguards and propose measures for enhancing transparency, accountability, and protection of fundamental rights.

Research Methodology

This research follows a doctrinal approach, relying primarily on legal analysis and case law interpretation to examine the impact of technology on criminal investigations. It extensively reviews primary and secondary sources, including statutes, judicial decisions, legal commentaries, policy reports, and scholarly articles. Comparative analysis assesses how jurisdictions regulate surveillance, digital evidence collection, and biometric data use in law enforcement. International legal instruments, such as the General Data Protection Regulation (GDPR) and the Budapest Convention on Cybercrime, are studied to understand global best practices in privacy protection. In addition, qualitative analysis is employed to evaluate ethical considerations surrounding AI and predictive policing. The research aims to provide a comprehensive legal and policy-oriented perspective, contributing to ongoing debates on balancing security imperatives with civil liberties in the digital age.

Introduction

The integration of technology into criminal investigations has not just improved, but revolutionized traditional policing methods. It has empowered law enforcement agencies with advanced tools, transforming how crimes are detected, analyzed, and prosecuted. In an era where digital footprints, artificial intelligence, and surveillance systems play a critical role, technology has not only improved the speed and accuracy of investigations but also provided innovative solutions for combating complex criminal activities such as cybercrime, financial fraud, and organized crime.

From the early adoption of fingerprinting and forensic science to modern tools such as predictive policing and digital forensics, technological advances have reshaped criminal justice systems worldwide. However, these advancements have not come without their share of challenges. The use of cutting-edge tools such as facial recognition, geolocation tracking, and AI-driven data analytics has significantly improved

investigative efficiency but has also raised serious ethical, legal, and privacy issues. These issues, including data protection, warrantless surveillance, algorithmic bias, and human rights violations, have become central to discussions about the responsible use of technology in law enforcement.

One of the most pressing issues in the use of technology in criminal investigations is the delicate balance between security and privacy. While law enforcement agencies see advanced surveillance and data analytics as essential to preventing crime, civil liberties advocates warn of the risks of mass surveillance, misprofiling, and misuse of sensitive information. Governments worldwide are grappling with the challenge of implementing laws that strike a fair balance between public safety and individual rights, resulting in a patchwork of regulations governing the use of technology in criminal investigations.

The legal environment surrounding digital evidence and surveillance technology is also evolving. Court decisions, such as *Riley v. California (2014)* in the United States, have highlighted the importance of obtaining authorization before accessing digital material. Similarly, the European Union's General Data Protection Regulation (GDPR) sets strict standards for processing personal information, including biometric and forensic data. These legal frameworks highlight the growing awareness of privacy rights in the digital age and the need for strict safeguards against potential abuses of technology.

The ethical dimensions of technology in criminal investigations are of paramount importance and require careful attention. For example, predictive policing algorithms have been criticized for perpetuating racial and socioeconomic biases, leading to the disproportionate targeting of marginalized communities. Likewise, facial recognition technology has been shown to produce false positives, increasing the likelihood of wrongful arrests. Instances of digital evidence being obtained through invasive methods such

as hacking, mass surveillance, or artificial intelligence analysis have also raised questions about the legality of such investigative techniques.

This study explores the key technological tools that impact modern criminal investigations, highlighting their strengths, limitations and broader societal impact. It aims to comprehensively understand how digital forensics, AI-driven surveillance, biometric authentication, and data mining contribute to law enforcement efforts while analyzing the legal and ethical challenges they raise. By examining international case law, existing regulations, and policy frameworks, this study aims to gain insights into how law enforcement agencies can responsibly utilize technology while upholding fundamental human rights and privacy protections.

The role of advanced technology in criminal investigations

Digital Forensics

Digital forensics is the recovery and investigation of digital device material, typically extracting data from smartphones, computers and cloud storage. Law enforcement agencies use the technology to retrieve deleted data, track digital footprints and analyze communications. However, digital forensics raises serious privacy concerns because of the extraction of personal data. Case law such as Riley v. California in 2014 has emphasized the importance of privacy protection by requiring authorization before accessing digital data from a cell phone. Additionally, courts worldwide have debated the admissibility of digital evidence, highlighting the need for strict protocols to prevent tampering and unauthorized access.

In cybercrime cases, digital forensics can be extremely valuable in tracking hacking attacks, ransomware attacks, and identity theft. Investigators rely on advanced tools to analyze metadata, recover encrypted files and track online transactions. In United States v. Microsoft Corporation (2018), the U.S. Supreme Court examined whether law enforcement could compel technology companies to turn over data stored on

foreign servers, illustrating the judicial complexity of digital forensics in a globally connected world.

In the Indian legal context, digital forensics has become increasingly important with the increase in cybercrime incidents. The case of Shafi Mohammad v. State of Himachal Pradesh (2018), which dealt with the admissibility of electronic evidence, highlighted the importance of establishing proper procedures to ensure authenticity and integrity. The Supreme Court ruled that digital evidence must be accompanied by a certificate under Section 65B of the Indian Evidence Act, 1872, to ensure its credibility.

Another important case is Anvar PV v. PK Basheer (2014), which highlighted the need to comply with Section 65B so that digital evidence can be admissible in court. The ruling clarifies the legal status of electronic evidence and sets a precedent for future cybercrime investigations.

Further, in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020), the Supreme Court reiterated that electronic records are admissible only if they comply with the provisions of the Indian Evidence Act. These cases highlight the justice sector's recognition of digital forensics as a critical investigative tool while ensuring that procedural safeguards are maintained to prevent abuse or wrongful convictions.

Artificial Intelligence (AI) and Predictive Policing

Artificial intelligence tools are widely used in criminal investigations to predict crime patterns, identify suspects, and process large data sets. Predictive policing uses algorithms to predict potential crime hotspots, allowing for a more strategic allocation of resources. Facial recognition and AI pattern analysis have enhanced the suspect identification process, but concerns remain about bias in AI systems. In the 2016 case State v. Loomis, the U.S. court expressed concerns about the opacity of AI-driven risk assessments in sentencing and emphasized the need for transparency and accountability in the application of AI.

The use of artificial intelligence in crime analysis is not limited to policing. Artificial intelligence tools can assist with forensic examinations, handwriting analysis, and even detecting deepfake videos used in cybercrime. Indian courts have also recognized the growing role of AI in criminal justice. In Justice KS Puttaswamy v. Union of India (2017), the Supreme Court expressed concerns about using unregulated artificial intelligence surveillance and stressed the need for a legal framework to prevent privacy violations.

Several states have deployed artificial intelligence facial recognition systems in India for law enforcement. However, concerns about accuracy and bias remain prominent. The lack of a comprehensive legal framework to regulate AI in policing has sparked debate over potential abuses and ethical issues. Some legal scholars and activists have called for GDPR-like legislation to regulate the role of AI in law enforcement and ensure protection against erroneous profiling.

In addition, India has piloted an AI-assisted predictive policing model to identify high-crime areas. While these models have demonstrated efficiency in resource allocation, concerns have been raised regarding discrimination and reinforcing pre-existing biases. Given that AI systems rely on historical crime data, there is a risk of perpetuating systemic inequalities, disproportionately targeting marginalized communities. Legal experts recommend that independent oversight bodies audit AI algorithms to mitigate these risks and create transparency in the decision-making process.

The future of AI in criminal investigations depends on establishing strong regulatory frameworks that ensure fairness, transparency, and accountability. While AI has significant advantages in improving policing efficiency, its unchecked use could lead to serious civil rights violations. The Indian judiciary plays a crucial role in shaping the legal contours of using AI in law enforcement, ensuring its deployment is consistent with constitutional protections and fundamental rights.

Biometrics

Biometric tools such as facial recognition, fingerprint scanning and DNA analysis have become integral to law enforcement. These technologies enable law enforcement agencies to identify individuals more accurately and quickly, greatly aiding criminal investigations. Biometrics are particularly useful when a suspect tries to hide his identity or when traditional investigative methods have failed. However, concerns about abuse, data security and privacy violations remain, necessitating strict regulatory measures.

Justice KS Puttaswamy v Union of India (2017) played an important role in shaping the legal discourse on biometric technology. The Supreme Court recognized the right to privacy as a fundamental right and emphasized the need for stringent safeguards in the collection and use of biometric data. The ruling directly impacts India's Aadhaar program, which involves biometric authentication for access to various government services. The court ruled that while Aadhaar can be used for welfare purposes, its use cannot be mandatory for all services, highlighting the importance of moderation and the necessity of using biometric profiles.

Another case, Lt. Col. KS Puttaswamy (Retd.) v. Union of India (2018), further highlighted the need for a data protection law to regulate the use of biometric technology. This led to the introduction of the Personal Data Protection Bill, which seeks to establish a legal framework governing the collection, processing and storage of biometric data.

Monitoring Technology

Surveillance technology, including CCTV cameras, drone surveillance, and IoT devices, has transformed law enforcement by constantly monitoring public and private spaces. These tools are vital in crime prevention, evidence collection, and situational awareness. However, their widespread deployment raises ethical concerns about privacy, mass surveillance, and potential government overreach.

CCTV surveillance and privacy issues

Closed-circuit television (CCTV) cameras are one of the most commonly used surveillance tools in urban spaces, banks, transportation hubs, and commercial establishments. These cameras provide live surveillance and recorded footage that can be used in criminal investigations. In India, cities such as Delhi and Mumbai have increased the number of CCTV cameras as part of enforcement measures to combat street crime.

However, privacy advocates worry that constant surveillance could trigger a "Big Brother" phenomenon. The landmark U.S. Supreme Court case Carpenter v. United States (2018) ruled that law enforcement must obtain a warrant before accessing historical cell tower location data, setting a precedent for digital privacy rights. In India, the Puttaswamy judgment (2017) highlighted the proportionality and necessity of state surveillance mechanisms.

Drone surveillance and regulatory gaps

Drones have become important for criminal investigations, border security, and crowd control. Law enforcement agencies deploy drones to monitor protests, track fugitives, and conduct reconnaissance in crime-prone areas. While drones improve combat efficiency, they also bring the risk of unauthorized surveillance.

In India, the Directorate General of Civil Aviation (DGCA) has laid out guidelines for drone use, but concerns remain about law enforcement agencies using drones without adequate oversight. Without a strong legal framework governing drone surveillance, there is ambiguity about the scope of permitted surveillance.

The Internet of Things (IoT) has expanded surveillance capabilities beyond traditional CCTV and drones. Smart home security systems, connected devices, and vehicle tracking systems provide valuable digital evidence for investigations. However, they also present cybersecurity risks, as

unauthorized access to these systems could lead to data breaches and privacy violations.

GPS Tracking and Geolocation

GPS tracking has become an important tool for law enforcement to monitor suspects' movements, reconstruct crime timelines, and establish alibis. Law enforcement agencies frequently access GPS data from mobile devices, vehicles, and wearable fitness trackers. The U.S. Supreme Court's decision in United States v. Jones (2012) highlighted the need for judicial oversight, which determined that installing a GPS device on a suspect's car without a warrant violated the Fourth Amendment.

Using GPS data as evidence in India has been controversial in various cases. In KS Puttaswamy v. Union of India (2017), the Supreme Court recognized the risks posed by mass profile collection and ruled that any invasion of privacy must pass the tests of legality, necessity and proportionality.

Social Media and Data Mining

Social media platforms have become an important tool in criminal investigations. Law enforcement agencies use data mining techniques to track gang activity, monitor public sentiment and identify suspects through their online footprints. However, the practices have raised concerns about excessive state surveillance, free speech and the ethical boundaries of monitoring individuals online.

The scandal (2018) exposed how social media data can be manipulated, prompting the EU to introduce stricter data protection regulations such as the GDPR. In India, the Personal Data Protection Act aims to regulate data collection by private and government entities but lacks clear guidelines on law enforcement access to social media data, raising concerns about unfettered surveillance.

Moral issues and legal protection

The increasing reliance on surveillance technologies requires legal safeguards to prevent abuse. Many surveillance programs are implemented without full public disclosure,

raising serious concerns about transparency and accountability. When the scope and purpose of surveillance measures are not clearly defined, it is difficult to determine whether they are consistent with constitutional principles and international human rights standards. The lack of oversight mechanisms could lead to unchecked mass surveillance and violations of fundamental rights such as privacy, freedom of expression and the right to dissent.

Unauthorized access to surveillance data is another key issue. Without adequate safeguards, sensitive information collected through surveillance technology could be used for personal or political gain. Cases of data breaches and illegal access to surveillance databases have led to instances of stalking, harassment and targeted discrimination. Ensuring that only authorized personnel have access to such data and imposing strict penalties for misuse are necessary steps to address this issue.

The legal framework governing electronic surveillance in India includes the Information Technology Act of 2000 and the Indian Telegraph Act of 1885. While these laws provide specific guidelines for surveillance activities, no comprehensive legislation specifically regulates mass surveillance. This legal ambiguity leaves room for discretion by law enforcement agencies, potentially leading to infringement of individual rights.

Several landmark cases have reinforced the importance of privacy as a fundamental right. In *Justice KS Puttaswamy v. Union of India (2017)*, the Supreme Court of India recognized that the right to privacy is a constitutionally protected right under Article 21. The ruling highlights the need for legal safeguards to regulate government surveillance and prevent arbitrary interference with personal data.

Similarly, in *People's Union for Civil Liberties (PUCL) v . Union of India (1997)*, the Supreme Court addressed issues relating to phone tapping and ruled that surveillance must be subject to procedural safeguards to prevent abuse. The courts

ruled that telephone tapping violated privacy rights unless authorized under established legal provisions. The case set a precedent for regulating electronic surveillance and emphasized the importance of judicial oversight of surveillance activities.

Carpenter v. United States (2018) has strengthened the right to privacy in the digital age. The U.S. Supreme Court ruled that law enforcement agencies must obtain a warrant before obtaining cellphone location data, recognizing that unrestricted access to such information constitutes an invasion of privacy. Similarly, the European Court of Human Rights has ruled in cases such as S. and *Marper v. United Kingdom (2008)* that the indefinite retention of biometric data without good reason violates the right to privacy under the European Convention on Human Rights.

Legal provisions to address surveillance-related issues should include strong data protection laws that regulate how surveillance data is collected, stored and shared. India's proposed Personal Data Protection Bill aims to introduce strict measures on data processing and access. However, concerns remain about law enforcement exemptions, which could allow authorities to conduct surveillance without adequate checks and balances. Policymakers must ensure that data protection laws impose strict rules on government surveillance to prevent excessive data collection and unauthorized access.

Strong oversight mechanisms must be in place to enhance accountability and minimize the risk of abuse. An independent regulator should be responsible for reviewing surveillance programs, ensuring compliance with privacy norms, and addressing complaints about unlawful surveillance. Regular audits and impact assessments should be conducted to evaluate the need for and appropriateness of monitoring measures.

Ethical considerations also play a crucial role in developing surveillance policies. While technology-driven surveillance can help prevent crime, it cannot come at the

expense of fundamental rights. Governments and law enforcement agencies should conduct public consultations to ensure surveillance policies are consistent with democratic values and reflect societal concerns. Public awareness campaigns can also help individuals understand their rights and legal remedies if they are the victims of surveillance-related violations.

As surveillance technology advances, balancing public safety and individual privacy remains a complex challenge. Governments must ensure security through effective law enforcement strategies while upholding the principles of transparency, accountability and human rights protection. By implementing a comprehensive legal framework, establishing independent oversight bodies and promoting ethical surveillance practices, policymakers can create a system that safeguards national security and civil liberties in the digital age.

Striking a balance between public safety and privacy

As surveillance technology advances, balancing public safety and personal privacy has become a pressing issue. Law enforcement agencies consider the ability to track criminal activity, monitor high-risk areas and use digital data to solve crimes to be critical to maintaining security. Civil rights advocates, however, warn that unchecked surveillance could lead to privacy violations, misuse of data and the erosion of fundamental freedoms. A multifaceted approach combining judicial oversight, transparency, public consultation, and strong data protection laws is needed to ensure that surveillance technologies serve public safety without infringing individual rights.

Judicial supervision

Judicial oversight is essential to ensure surveillance measures comply with constitutional rights and privacy norms. Courts should have the power to approve surveillance requests to prevent law enforcement agencies from abusing surveillance technology. In the *United States, Carpenter v. United States*

(2018) established the precedent that law enforcement must obtain a warrant before accessing historical cell site location data. Similarly, in India, the case of *Justice KS Puttaswamy v. Union of India (2017)* reaffirmed that privacy is a fundamental right, requiring the government to justify any surveillance measures based on the principles of legality, necessity and proportionality.

A sound legal framework can ensure that surveillance is conducted legally and that authorities are held accountable. Implementing a search warrant system requires law enforcement agencies to provide sufficient evidence to justify surveillance, which can prevent overreach and protect citizens from unnecessary data collection.

Transparency measures

Transparency in surveillance operations is critical to maintaining public trust in law enforcement agencies. Government agencies should disclose the scope and extent of their surveillance programs to ensure citizens understand how their data is collected and used. Regular reporting and public disclosure of surveillance policies can help address concerns about mass surveillance and potential abuses of power.

Countries like the UK have established independent oversight bodies, such as the Office of the Investigatory Powers Commissioner (IPCO), to review surveillance activities and ensure compliance with human rights law. In the EU, GDPR requires individuals to be informed about collecting and processing their data. Similar measures should be implemented globally to increase transparency and accountability of monitoring programs.

Public consultation

Public participation in the development of surveillance policy is essential for democratic accountability. Surveillance technology policies should involve civil society, legal experts, and data protection agencies to ensure that laws reflect society's concerns. Public debate and consultation can help

policymakers understand surveillance measures' ethical and legal implications and make more informed decisions.

The Digital Personal Data Protection Act has sparked discussions on balancing law enforcement needs and personal privacy rights. Governments can develop frameworks that protect safety and civil liberties by working with stakeholders and promoting more inclusive and rights-based approaches to surveillance governance.

Strict data protection laws

Strong data protection laws are essential to regulate how surveillance data is collected, stored and used. Without clear legal guidance, surveillance data could be misused for purposes other than crime prevention. The EU's GDPR sets a global benchmark for data protection and imposes strict requirements on data collection, storage and sharing. It requires that personal data be processed lawfully, fairly and transparently, ensuring individuals retain control over their information.

In India, the Personal Data Protection Bill seeks to establish similar safeguards, but concerns about immunity from enforcement remain. Policymakers must ensure that data protection laws impose strict rules on government surveillance and prevent excessive data collection and unauthorized access. A comprehensive framework should limit how long surveillance data can be stored to prevent indefinite detention. Ensure that only authorised personnel can access sensitive information, and audits are carried out regularly to review compliance with data protection laws.

Conclusion

The increasing reliance on technology in criminal investigations has significantly advanced law enforcement practices. From digital forensics and artificial intelligence to biometric authentication and surveillance technology, these tools change how crime is detected, prevented, and prosecuted. However, the rapid expansion of technological capabilities also raises serious concerns about privacy rights, ethical

implications, and regulatory oversight. As we move forward in our increasingly digital world, it is critical to balance leveraging technology for security purposes and protecting individual freedoms.

One of the most pressing issues raised by using technology in law enforcement is the potential for privacy violations. Cases such as *Carpenter v. United States (2018) and Justice KS Puttaswamy v. Union of India (2017)* have highlighted the importance of legal safeguards to ensure that surveillance technologies and digital investigations do not infringe on fundamental rights. Governments and law enforcement agencies must develop strong policies to regulate personal data collection, storage and use while ensuring that technology is not abused for mass surveillance or discrimination.

While artificial intelligence can enhance law enforcement capabilities, it also carries the risk of bias and wrongful convictions. Predictive policing models, AI-powered facial recognition, and automated decision-making tools have all been criticized for reinforcing systemic biases against marginalized communities. The 2016 case State v. Loomis demonstrated the dangers of opaque AI algorithms influencing judicial decisions without transparency and accountability. Policymakers must address these challenges by implementing regulations to ensure that AI models are fair, explainable, and subject to human oversight.

Likewise, biometric technologies such as DNA analysis and facial recognition have become indispensable in criminal investigations but have raised concerns about abuse and data security. While cases such as Maryland v. King (2013) have upheld the constitutionality of collecting DNA from arrestees, other cases have questioned the ethical implications of storing biometric data indefinitely. Countries need to develop comprehensive laws to govern the retention and sharing of biometric data while ensuring individuals have control over their personal information.

Surveillance technology, including CCTV, GPS tracking and social media mining, has significantly improved crime detection capabilities and raises ethical dilemmas. The Cambridge Analytica scandal (2018) exposed how personal data could be used without consent, prompting the introduction of stricter data protection regulations such as the EU's GDPR. India's upcoming Digital Personal Data Protection Act aims to address similar issues, but gaps remain in ensuring law enforcement agencies operate within clearly defined legal boundaries.

The legal framework for using technology in criminal investigations varies across jurisdictions, leading to inconsistent enforcement and rights protection. The lack of uniformity in international data-sharing agreements complicates transnational cybercrime investigations, so global cooperation to develop standardized rules is essential. Initiatives such as the Budapest Convention on Cybercrime lay the foundation for collaborative efforts, but more is needed to harmonize privacy laws and ensure ethical use of technology worldwide.

Governments and the judiciary must prioritize transparency, accountability, and public trust to mitigate the risks posed by technological advances in law enforcement. Regular audits, independent oversight boards, and public discussions about surveillance policies can foster confidence in enforcement practices while guarding against potential abuses. Civil society organizations, legal experts, and technical experts should actively participate in developing policies that clarify the ethical boundaries of using technology in criminal investigations.

In addition, the role of judicial intervention in regulating technological tools cannot be ignored. Courts must uphold constitutional protections while adapting legal principles to emerging technological realities. Digital privacy has been recognized as a fundamental right in various landmark cases, demonstrating the judiciary's ability to uphold civil liberties in

the digital age. However, lawmakers are also responsible for drafting comprehensive legislation that anticipates future challenges posed by evolving technologies.

Ultimately, the future of criminal investigative technology must be guided by a commitment to ethical policing, human rights, and democratic accountability. While technological innovations provide law enforcement agencies with powerful tools to fight crime, they must be used responsibly and within the framework of the rule of law. Technology integration should not come at the expense of civil liberties, and policymakers, law enforcement, and the judiciary must work together to ensure that technological advances serve justice while upholding the fundamental rights of individuals.

As society embraces digital transformation, ongoing dialogue between governments, legal agencies and technology stakeholders is essential to developing a fair and balanced approach to law enforcement. By developing legal frameworks that prioritize privacy, transparency, and ethical governance, we can create a criminal justice system that effectively uses technology while respecting the rights and dignity of all individuals. The development of criminal investigation technology brings both opportunities and challenges and how we respond to these complexities will determine the future of justice in the digital age.

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- The legal implications of using predictive policing algorithms remain controversial (*State v. Loomis, 2016*), as AI-based sentencing raises concerns about transparency and fairness.
- The European Court of Human Rights ruled that the indefinite retention of biometric data without justification violates privacy rights (*S. and Marper v. United Kingdom, 2008*).
- Digital evidence must adhere to legal standards for admissibility, as reaffirmed in (*Anvar P.V. v. P.K. Basheer, 2014*).
- The U.S. Supreme Court held that accessing historical location data without a warrant constitutes a privacy violation (*Carpenter v. United States, 2018*).
- The *General Data Protection Regulation (GDPR)* provides stringent protections against unauthorised personal data collection, setting a benchmark for global privacy laws.

Understanding the Presumption of Non-Consent in Rape Cases: A Critical Examination

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Introduction

The presumption of absence of consent in rape prosecutions is a cornerstone of criminal jurisprudence, reflecting the evolving legal and societal recognition of the power dynamics inherent in sexual offenses. This principle is not merely a procedural convenience but a substantive legal safeguard designed to balance the scales of justice in favor of survivors, who often face insurmountable hurdles—both legal and societal—when seeking redress. Rooted in the understanding that sexual violence is rarely accompanied by overt physical resistance or explicit verbal dissent, this presumption acknowledges the realities of coercion, intimidation and the socio-cultural conditioning that often silences victims.

This paper critically examines the legal provisions governing consent in rape cases under Indian law, with a particular focus on Section 120 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA). By juxtaposing statutory mandates with judicial interpretations, it seeks to unravel the nuanced legal landscape that defines consent—whether as an unequivocal affirmative agreement, an inferred submission under duress, or a construct manipulated by defense strategies in courtrooms. While the presumption of absence of consent strengthens the prosecution's case, it also raises critical questions: Does this shift in evidentiary burden erode the foundational principle of 'innocent until proven guilty[1]'? To

what extent does it shield victims from the grueling cross-examinations that often morph into character assassinations?

Indian courts have wrestled with these dilemmas, producing a jurisprudence that oscillates between progressive interpretations and deep-seated patriarchal biases. Some landmark rulings have reinforced the survivor-centric approach, holding that mere lack of resistance does not equate to consent. Others have subtly reintroduced regressive notions, scrutinizing a victim's past sexual conduct, delay in reporting, or even the absence of physical injuries. Furthermore, the introduction of BSA, 2023, signals a legislative shift—yet, does it offer a radical departure from the Indian Penal Code, or is it merely old wine in a new bottle[2]?

This discourse gains further complexity when examined through the lens of societal implications. In a legal system where marital rape remains unrecognized, where allegations of false cases are weaponized to discredit genuine survivors, and where honor, shame and victim-blaming often take precedence over justice, the presumption of absence of consent is not just a rule of evidence—it is a battleground. The paper, therefore, seeks to untangle these legal and extra-legal entanglements, interrogating whether the existing framework truly serves the cause of justice or whether it inadvertently creates new hurdles under the guise of protection.

The Concept of Consent: Definition, Challenges, and Legal Implications

Consent is a cornerstone of sexual offenses law, defined as a voluntary, informed, and unequivocal agreement by an individual with the capacity to make such a decision[3]. In the prosecution of rape cases, determining whether consent was present or absent is central to establishing guilt. For consent to be legally valid, it must be given freely without coercion or manipulation, expressed clearly rather than inferred from silence or passive submission and made by an individual possessing the mental capacity to comprehend the nature of the act—factors such as intoxication or mental incapacity can

render consent legally invalid. However, proving the absence of consent remains one of the most complex aspects of rape prosecutions due to deep-rooted societal stigma, psychological trauma, and entrenched cultural norms that often cast doubt on victims' credibility. Victims frequently encounter victim-blaming narratives, social ostracization, and legal skepticism, which deter them from reporting crimes or fully articulating their experiences[4]. Moreover, trauma-induced memory fragmentation can impact their ability to provide a coherent account of events, leading to judicial reluctance in accepting their testimony at face value. Given these evidentiary challenges, legal frameworks have increasingly adopted a victim-centric approach that seeks to alleviate the burden on survivors while ensuring procedural fairness for the accused. The presumption of non-consent plays a crucial role in shaping the prosecution of rape cases by reducing the requirement for extensive corroboration, thereby strengthening the evidentiary position of victims. This presumption ensures that courts prioritize survivors' testimonies and recognize the inherent difficulties they face in proving coercion or resistance. However, judicial discretion remains paramount, as judges must carefully evaluate whether this presumption applies in individual cases, balancing the need for victim protection with the fundamental principles of a fair trial. Thus, while the presumption regarding the absence of consent marks a progressive legal development, its effectiveness ultimately depends on how courts interpret and apply it within the broader social and cultural landscape of sexual violence jurisprudence.

Legal Framework in India

Bharatiya Sakshya Adhiniyam, 2023

Bharatiya Sakshya Adhiniyam, 2023[5], plays a crucial role in defining the parameters of evidence in legal proceedings, including those involving sexual offenses. Section 120 specifically addresses the presumption of absence of consent in cases of rape. This provision states that if a woman alleges that she did not consent to sexual intercourse

and it is proven that such intercourse took place, the court shall presume that she did not consent. This presumption serves several important functions:

1. Shifting the Burden of Proof

Traditionally, the burden of proof rests on the prosecution, but Section 120 allows courts to presume non-consent based on the victim's testimony in certain rape cases. This is particularly significant given that sexual violence often occurs in private, making direct evidence scarce. The provision counters historical judicial tendencies that demanded excessive corroboration, often leading to unjust acquittals. However, this presumption is not absolute; the accused retains the right to rebut it through credible evidence. While some critics argue that this shift challenges the principle of "innocent until proven guilty," courts maintain discretion in evaluating the overall evidence.

2. Protecting Victims from Re-Traumatization

The presumption also shields victims from hostile legal scrutiny, where survivors often face character assessments, invasive questioning, and undue skepticism. Many victims may not exhibit physical resistance due to fear, coercion, or trauma, yet traditional legal frameworks have frequently dismissed cases due to the absence of physical injuries or delayed reporting. By presuming non-consent, the law acknowledges these realities and ensures that survivors are not discredited solely for their inability to provide extensive corroboration.

3. Encouraging Reporting and Strengthening Access to Justice

Fear of social stigma, institutional apathy, and victim-blaming discourages many survivors from reporting rape. The presumption of non-consent alleviates some evidentiary burdens, offering victims greater confidence in seeking justice. However, concerns persist regarding judicial interpretation, potential misuse and the balance between victim protection and due process. While false allegations remain statistically rare,

they are often exaggerated in legal discourse, leading to calls for a more cautious application of this presumption.

Judicial Interpretation

Indian courts have played a pivotal role in interpreting Section 120 and other provisions concerning consent in rape cases. Several landmark judgments have shaped the application of this presumption, gradually strengthening the legal framework that prioritizes the survivor's testimony while balancing the accused's right to a fair trial.

In State of U.P. v. Naushad,[6] the Supreme Court upheld the conviction of the accused based on the sole testimony of the victim, emphasizing that if her account is credible and trustworthy, it is sufficient for conviction without requiring further corroboration. This ruling reinforced the evidentiary value of a survivor's testimony, ensuring that courts do not dismiss cases merely due to a lack of physical evidence. By giving due weight to the victim's statement, this judgment played a crucial role in strengthening the presumption of absence of consent.

Similarly, in Mohd. Eqbal v. State of Jharkhand[7], the Supreme Court addressed the issue of consent in the context of gang rape. The court ruled that in cases involving multiple perpetrators, the notion of consent becomes irrelevant due to the inherently coercive nature of such acts. This judgment underscored the importance of contextualizing consent, recognizing that power dynamics and violence leave no room for voluntary participation. It reinforced the need for a survivor-centric approach, ensuring that consent is not mechanically assessed but understood within the broader framework of coercion and fear.

In Mukesh v. State of Chhattisgarh[8], the court reaffirmed that the absence of consent could be established through the victim's testimony alone if it inspired confidence. The judgment stressed that courts must be sensitive to the realities faced by survivors, particularly the psychological and social barriers that often prevent immediate reporting or the presence

of physical resistance. By acknowledging these factors, the ruling further strengthened the presumption of absence of consent, reducing the evidentiary burden on victims and aligning legal interpretations with the lived realities of sexual violence.

These judicial interpretations reflect a growing recognition within the Indian legal system that consent must be understood within a broader social and psychological context. They collectively highlight a shift towards a more victim-centric legal approach while still ensuring procedural fairness for the accused. However, challenges remain in ensuring uniform judicial sensitivity, particularly in cases where courts revert to archaic notions of consent that demand excessive proof of resistance or immediate reporting.

Conclusion

While the presumption of absence of consent in rape prosecutions marks a progressive legal intervention, its practical efficacy remains a double-edged sword—a tool of empowerment for victims yet a subject of intense judicial scrutiny. By alleviating the burden on survivors, the law ostensibly levels the playing field in a system that has historically favored the accused. However, the presumption is not without pitfalls. The risk of its misapplication—whether through mechanical judicial adherence or the dilution of the presumption's intent through inconsistent rulings—poses a challenge to its effectiveness. Moreover, while the doctrine strengthens a victim-centric approach, it inadvertently raises concerns about balancing the rights of the accused, particularly in cases where allegations rest solely on testimonial evidence.

The judiciary thus stands at a crossroads: how to wield this presumption effectively without allowing it to compromise the fundamental tenets of a fair trial. As legal interpretations evolve, courts must walk a fine line between reinforcing gender-sensitive justice and preventing potential miscarriages of justice arising from over-reliance on presumption. Furthermore, legal frameworks must acknowledge that true

justice is not merely about shifting burdens but about ensuring systemic integrity—where laws empower victims while maintaining procedural safeguards. Without nuanced application, the presumption could either revolutionize sexual offense prosecutions or become a contested doctrine susceptible to dilution or misuse. The path forward demands more than statutory amendments; it calls for judicial vigilance, legal refinement, and societal commitment to dismantling the structural barriers that necessitated this presumption in the first place.

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Analysis of Personality Rights in India and the Legal Safeguards Against Exploitation in the Digital Age

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Abstract

Personal rights, including the right to privacy and publicity, are essential to protect individuals from unauthorized commercial exploitation of their name, image, likeness and other identifiable aspects. In India, the legal framework on personality rights is still developing and its safeguards derive mainly from judicial interpretations, constitutional provisions and statutory laws. This paper examines the available safeguards against misuse of personality rights in India, focusing on constitutional, statutory and judicial mechanisms. It also highlights the challenges in enforcing these rights and recommends strengthening the legal framework.

Keywords: Personality Right, Publicity Right, Celebrity, Publicity, Right Intellectual, Property Rights, Trademark, Constitution of India, copyright

Introduction

Personal rights are an important aspect of an individual's autonomy and dignity and protect them from misappropriation of their identity for commercial and other purposes. In India, the rise of celebrity culture, social media and commercialization of personal brands has brought increased attention to the recognition and enforcement of personality rights. However, in the absence of a specific law dealing with personality rights, we have no choice but to rely on judicial interpretations and existing legal frameworks. This paper analyses constitutional provisions, statutory laws and case law

and examines the safeguards available to protect personality rights from exploitation in India.

Understanding of Personality Rights

The definition of Personality Rights includes a grouping of rights which protect the identity of persons, particularly well-known celebrities, because these celebrities allow others to use their name, signature image, or other components to boost business activities. Who is a celebrity? The Delhi High Court in Titan Industries Ltd. vs Ramkumar[1] Jewellers2 (2012) defined celebrities as public figures who attract attention from numerous people while also establishing that "The right to control commercial human identity uses makes up the right to publicity.". Under this instance, the Court issued a restraining order to defend the Defendants who utilized Tanishq's celebrity couple advertisement images without authorization, thus affirming Amitabh Bachchan and Jaya Bachchan's personality rights. During this particular case, celebrity rights received greater social acknowledgment. The recognition also presented a clear understanding that celebrity rights contains multiple categories that involve intellectual property rights as well as publicity and personality and privacy rights. publicity, personality, and privacy.

The personality rights which celebrities possess derive from their rights to safeguard privacy and their rights to publicity. Under the right to publicity law one possesses the capability to override commercial use of personal traits including signature and voice and name and image and other distinct characteristics that differentiate an individual from standard population. Under the right to privacy, a person maintains the ability to remain free from unwanted monitoring and unwelcome intrusion in their life and activities. The Supreme Court officially recognized privacy rights as personality rights within R Raja Gopal v State of Tamilnadu[2].

According to the Court in this case: "The initial element of this right suffers invasion whenever a person's name or likeness gets used without his consent either for advertising or

unrelated purposes." The constitutional right to privacy remains permanent because of both cases, Puttaswamy v Union of India and ors[3]. The Supreme Court established that privacy rights terminate when someone dies, but this declaration raised important questions about what happens to publicity rights after the person whose privacy rights have expired. We understand that Personality rights/Celebrity Rights continue to develop into new phases because of their current state of growth.

Statutory Protection to Personality Rights in India

Trademark

Trademark registration by celebrities becomes vital because unauthorized use of celebrity property occurs frequently to increase profits therefore, these rights need protection under the Trademarks Act 1999. The registered name of a celebrity subject to trademark protection under Section 14[4] of the Act serves to prevent dishonest associations with a person whose passing took place within 20 years before trademark application. The registration allows legal representatives or beneficiaries to defend their names from deceptive and harmful misuse. The law now establishes that any infringement of right of publicity against celebrities does not need proof of deception or falsity when the celebrity remains identifiable.

Copyright

The Copyright Act of 1957 admits 'performer' through section 2(qq) although 'celebrity' remains undefined. The definitions apply to actors, singers, musicians, dancers and lecturers alongside snake charmers and additional performing individuals[5]. Any person who works in the sports media and entertainment field can be called a celebrity and so on. Performers receive protection according to law which extends its protection to celebrities under Personality Rights legislation. The Act does not provide protection for the voice of a celebrity because this particular use of voice does not meet the definition criteria for literary dramatic or musical work.

The lack of definition and inadequate approach to the issue of the moral rights of celebrities indicates the challenges regarding the moral rights of celebrities and the rights over their image and voice and the Copyright Act, 1957 should take steps to address and protect the moral rights of celebrities.

Remedies for infringement of Personality Rights

Violation of personal rights may lead to claims for damages under provisions applicable to torts in India. For example, misusing a person's name or reputation and falsely representing him to cause damage or injury constitutes the tort of defamation. Certain provisions of the Criminal Code (Indian Penal Code) aimed at protecting privacy are also applicable.

The Copyright Act, Patent Act and Trademark Act are also available to provide protection against any form of misappropriation of property. Copyright can be considered as a remedy for violation of privacy and personal rights as Section 55 of the Copyright Act provides specific remedies in case of copyright infringement. Section 56 of the Copyright Act provides for the protection of the separate rights constituting copyright in any work and Section 57 of the Copyright Act gives special rights to the author and even after the copyright has been assigned in whole or in part, the author shall have "the right to assert authorship of the work and the right to restrain any distortion, mutilation or other modification of the work or any other act in respect of the work prejudicial to the author's honour or reputation or to claim damages." The above special rights, apart from the right to claim authorship of a work, can also be exercised by the author's legal representative. Depending on the facts of the case, remedies under the Representation of Women (Prohibition) Act, Juvenile Justice (Protection and Care of Children) Act, 2000 and Protection of Human Rights Act, 1993 may be sought. The Cable Television Networks (Regulation) Act, 1995 and Press Council Act, 1978 provide for the Council to investigate newspapers, editors and journalists if they have not followed

the recommended standards and ethics and are reasonably believed to have committed professional misconduct.

In India, several judicial decisions have recognised that personality rights are derived from the right to privacy. In the Amar Nathsegar case (2005), the government tore off a sculpture by world-renowned sculptor Amar Nathsegar from the wall of Vigyan Bhawan and dumped it in a warehouse. Segal was outraged by this injustice and approached government authorities asking for the murals to be restored, arguing that "the murals are part of the national heritage and are valuable to him and the country as a whole and the destruction of the works diminishes their totality and tarnishes his reputation." The court issued a mandatory injunction ordering UOI to return the murals to Segal. Segal "has the right to recreate the works and is therefore entitled to the destroyed murals. He is also entitled to compensation for the loss of his reputation, honour and moral damages caused by UOI's unlawful conduct," the court ruled.

Provisions in International Conventions

Globally, the concept of publicity rights is gradually evolving in different jurisdictions. There are many international treaties and conventions related to the protection of performers' rights. Landmark treaties in this regard include the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 1961 (Rome Convention), TRIPS and the WIPO Performances and Phonograms Treaty (WPPT) of 1996.

Rome Convention

This is the first international treaty dealing with the rights of performers, producers of phonograms and broadcasting organizations. Performers are not given the right of secondary use as in the case of films under Article 19. The right of secondary use is limited to fair remuneration. This treaty does not protect the moral rights of authors.

TRIPS

Article 14(1) of TRIPS requires performers to be given the "possibility to prevent" acts such as fixation of performances in phonograms, reproduction of fixations and broadcasting of performances. Article 14(5) allows this period to be extended from 20 to 50 years. Unlike other agreements on intellectual property, TRIPS has a strong enforcement mechanism and member states can seek sanctions through the WTO's dispute settlement mechanism.

WIPO Performances and Phonograms Treaty (WPPT)

This treaty was concluded with the aim of developing and maintaining the protection of the rights of performers and producers of phonograms as effectively and uniformly as possible. It recognizes the need to introduce new international rules to provide adequate solutions to the problems raised by modern developments, the significant impact of the development and convergence of information and communication technologies on the production and use of performances and phonograms, and the need to maintain a balance between the rights of performers and producers of phonograms and the broader public interests, in particular education, research and access to information[6]. Article 5 of the treaty provides that, apart from economic rights, performers have the right to request to be identified as performers of their performances (moral rights), except under certain conditions.

Apart from moral rights, performers enjoy economic rights in unfixed performances (Article 6), the right of reproduction (Article 7), the right of distribution (Article 8), the right of rental (Article 9), and the right of making available fixed performances (Article 10). As a result, performers have an "exclusive right to permit" and not merely a "possibility of preventing".

Important Judiciary Prouncement on Personality Rights

In India, there is no dedicated law or statute on personality Rights other than what we derive out of the I.P.R. laws and Article 21 of the Constitution of India, but Indian

courts have started recognizing the Personality Rights of celebrities through judgments: One of the most important judgments related to personality rights was given in I.C.C. Development (International) Ltd. vs Arvee Enterprises[7], by the Delhi High Court in the year 2003, it was held that: "The right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual's personality like his name, personality trait, signature, voice. etc. Virtue of personal association an individual develops the right of publicity which belongs to themselves of his association with an event, sport, movie, etc.".

Rajnikanth filed a suit for injunction against Varsha Production to prevent them from using his name and caricature and delivering his style dialogue in "Main Hoon Rajinikanth" without his authorization which compromised his personality Rights. The Court issued an injunction by stating that Constitution Article 21 grants each person the right to live with dignity and under the law any action which damages earned reputation becomes legally punishable[8].

Gautam Gambhir used his professional presence to pursue legal action against D.A.P & Co. & Anr[9] when they utilized his name to operate their restaurant and lounge despite lacking ownership ties with him. The court dismissed the lawsuit against them. The defendant escaped legal responsibility through the court verdict which established "The law protects business owners from exploring their ventures when such conduct misleadingly suggests association with another commercial entity. The law grants individuals freedom to use their own name when running a business unless they take additional actions that create confusion about other businesses. Every person works legitimately/bonafide if they maintain their business identity independently of another business.

A case regarding Personality rights of celebrities received its latest judgment from the Delhi High Court through Krishna Kishore Singh v. Sarla A. Sarah & Ors[10] which

examined the accessibility of such rights for deceased celebrities. Sarla A. Saraogi & Ors. The plaintiff's father Krishna Kishore Singh filed a petition at the High Court for rights protection on his son's personality even after his death while also requesting injunctions against parties who produced content about Sushant Singh Rajput to make profit without consent from the legal heir which constituted an infringement of personal rights and privacy. The plaintiff Sushant Singh Rajput's father utilized Kirtibhai Raval's case[11] from Gujrat High Court as his foundation to secure posthumous protection for his family and demand an injunction against third parties who printed unauthorized materials to earn profits without legal family agreement. The plaintiff in S.S.R. Case argued for distinguishing between the rights of celebrities and the right to privacy. The Delhi High Court established through its decision that celebrity rights must always remain connected to privacy rights. Such privilege exists without legal statutes because Article 21 acknowledges privacy rights within the Constitution of India.

The law protects a narrow category of celebrity rights through assignment or licensing functions as defined in particular statutes including the Copyright Act along with other relevant legislation and these rights continue after a celebrity passes away. Death marks the expiration of both privacy rights and publicity rights because they originate from privacy. In its ruling the Court used the Puttaswamy decision to validate its conclusion thereby stating "557. Each person holds an essential natural right to privacy as a birthright present in all human beings. The human being preserves their right throughout their life span until their final breath. A human being cannot exist without this natural right which remains with them throughout their entire lifetime. The right is present when a person is born thus ending at the time of death. In Deepa Jayakumar v AL Vijay the Madras High Court established that no one including legal heirs of the deceased can inherit privacy or personal rights of an individual since these rights die with the person.

[12]Deepa Jayakumar received no personal rights connected to the former Chief Minister of Tamil Nadu after his death. Justice Narula in S.S.R.'s case followed this existing precedent when he stated that posthumous privacy rights of celebrities cannot be permitted because personality rights disappear after death.

Conclusion

From the above judicial decisions, it is clear that the attributes of a celebrity cannot be exploited for commercial gain or any wrongful purpose by any person without the prior consent of the celebrity in question. The goodwill, brand value, and reputation acquired by celebrities are the result of the efforts they have put in. Thus, the courts will punish the unjust and unauthorized use and exploitation of personality rights with wrongful intent by any person other than the celebrity himself. It is also inferred that the courts should not only focus on the valuable rights of celebrities, but also enact new laws to protect consumers from the resulting false and misleading advertisements and endorsements. The succession of fame and celebrity rights needs to be considered from a different perspective.

The reason is that the personal attributes, fame, or acquired goodwill of a celebrity cannot be left to be exploited without just cause, whether the celebrity is alive or not, and therefore it is necessary to protect the rights from commercial exploitation, misappropriation, or tarnishing of the celebrity's image, which is essentially linked to economic gain. In this age of evolving mass media, there is a need for a robust legal structure that addresses the concerns of celebrities and those who have risen to stardom, which are not adequately addressed by the Indian Intellectual Property Rights Act. Globally, European countries and many states in the US have enacted full-fledged legislation to protect these rights, while Indian laws have not made much effort or recognition to protect the privacy and personality rights of celebrities from commercial exploitation. Indian court rulings are uneven due to lack of

clarity on this very issue, which is further aggravated by the lack of proper legislative guidelines and governing laws. Hence, the Indian legislature should consider enacting a celebrity-related rights law that would regulate the rights of celebrities, provide adequate protection, curb commercial and moral exploitation, and protect their underlying interests.

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The Role of Adducing Expert Evidence in Designs Act, 2000

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Abstract

This paper discusses the principle of prior publication under Designs Act, 2000, with special reference to its implications on design novelty and protection. The paper centralises the interpretation given in the cases of Gopal Glass Works Ltd. v. Assistant Controller of Patents and Designs and Bharat Glass Tube Ltd. v. Gopal Glass Works Ltd. in order to draw attention towards the uncertain and sporadic nature of determining the concept of prior publication through subjective and unstandardised evaluative tools. The paper advances orthographic measurements as the possible solution for increasing clarity and objectivity in deciding on the novelty of design disputes. Orthographic projections ensure accurate recording of features of the designs and can allow courts and authorities to make comparisons between designs so as to determine the novelty precisely. In this manner, this would bridge the gap between the legal interpretation and technical assessment, while also aligning the principles with the expert evidences required to uncloud the technical considerations involved in Design litigations. The paper seeks to address that the ambiguities and inconsistencies in prior publication determinations could be potentially reduced, while ensuring a more scientific and technically sound ascertainment of the embargo of prior publication – with the view of a "person skilled in the art". The paper advocates that the incorporation of orthographic measurements into the design registration and litigation processes, the objectives of protecting innovation

while preventing the misuse of design rights can be achieved. The paper concludes by affirming the necessity of adopting such precision-driven methodologies to strengthen the legal framework governing industrial designs in India.

Keywords: Designs Act, 2000 ● Orthographic Measurements ● Product Creation ● Prior Publication.

Statement of Research Problem

The principle of Prior Publication is considered as a centripetal consideration in the realm of Industrial Design protection as it determines, under the Designs Act 2000, whether or not a design is new and original. The correct adjudication of prior publication is thus very crucial in ensuring that only genuine novel designs receive statutory protection, thereby fostering innovation and fair competition. Although this is a significant requirement, the interpretation of prior publication has often been ambiguous due to subjective assessment and lack of standard tools for evaluating disclosures about design.

The current regime of Design Protection, literature and jurisprudence reveals a sizeable lacuna of lack to explore the use of orthographic measurements of design and product creation as a mechanism to address these challenges. The current approaches rely on visual assessments and descriptive narratives, which can cause inconsistencies and inadequate adjudication in design disputes, while not factoring in the opinion of the persons and the experts who are considered as a yardstick for the determinations – the person having skill in the art.

This paper aims to bridge the gap by suggesting that an orthographic measurement, that is, detailed and accurate technical representations of designs, be introduced as a standard measure for evaluation. Since objective evidence of design features would be provided by the projections, orthographic measurement is likely to significantly enhance clarity and accuracy in the determination of prior publication. This paper argues that such an approach would not only

strengthen the adjudicatory process but also align with the broader goal of promoting innovation and protecting genuine design rights within the statutory framework.

Research Objective

The Research Objective for the Paper is as follows: To determine the applicability of Expert Evidence in Design Litigations

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 employs a Descriptive Research, whereby the present interpretations and the regime of the Design litigations are viewed and critically appraised, in order to suggest workable and scientifically astute solutions.

Introduction

The rationale and the catalyst behind Intellectual Property Rights and the protections are granted with the motive of introducing and stimulating innovations and inventions[1]. The types of Intellectual Property Rights aim at providing the protection to the various facets of the inventions and the innovativeness projected by the persons and the citizens of the country. Further, in furtherance of the protection and the requirements thereof, the accurate definition and determination of prior publication as a concept is important as it impacts the filing and maintenance of a patent or design[2]. Further, the concept of prior publication has evolved taking into consideration many factors such as the degree of imagination and experimentation required, the impeccable quality of such publication, different interpretations in distinguishing between publication by use and publication by document[3], etc.

The rationale for granting protection and benefits for registering Intellectual Property Rights aims to strike a balance between industrial benefits and incentives for developing protection infrastructures. In addition, the balance envisages to be struck aims to establish the benefits of robust inventions and the sense of collective growth that comes with them[4]. The Intellectual Property Rights granted to individuals focus on protecting their owners as well as encouraging innovation and invention, which can lead to exponential growth and increased profits for investors and inventors. The current regime revolving around the protections of the Intellectual Property Rights have resulted due to the culminating benefits of the international commitments and International Conventions. The various Conventions such as the Paris Convention on the Protection of Industrial Property, 1883, the Trade-related Aspects of Intellectual Property Rights Agreement, 1995, among others have paved way for the development of the regime, including the patenting and the design protection regime. The impact of the Paris Convention for the Protection of Industrial Property, 1883 and the Trade-related Aspects of Intellectual Property Rights Agreement, 1995 on Indian patent and design laws has resulted in significant amendments to the Patents Act, 1970, and the Patents Amendment Act, 2005[5]. The Patents Amendment Act, 2005 was enacted in 2005 owing to compliance requirements arising from the entry into force of the TRIPS Agreement[6]. In furtherance of the requirement of compliance with the TRIPS Agreement, India has adopted requirements and criteria requiring patenting of products[7] and processes for all industries as opposed to the earlier concept of exempting certain industries from patenting[8].

Moreover, in the requirement of the similar compliances, India had to enact new legislation to meet design protection requirements to comply with the TRIPS Agreement, the framework of which is incorporated into many other national laws[9]. Legislations such as the Industrial Designs Act, 2000 (which envisaged the protections to the Industrial Designs), the

Protection of Plant Varieties and Farmers' Rights Act, 2001 (to provide a *sui generis* protection to plants and varieties as well as farmers rights incumbent thereto), the Semi-Conductor Integrated Circuits Layout-Designs Act, 2000 (to provide protection to Layout-Designs of Integrated Circuits), among others, are all the result of ensuring compliance with the international commitment under the Conventions[10].

Role of Expert Evidence

The Law of Evidence and the scheme of adducing the evidence enables the adducing the evidence on the various aspects of "point of foreign law or of science or art, or any other field, or as to identity of handwriting or finger impressions, the opinions upon that point of persons especially skilled in such foreign law, science or art, or any other field, or in questions as to identity of handwriting or finger impressions"[11]. It has to be noted that as per Section 39 of the Bharatiya Sakshya Adhiniyam, 2023, the expert evidence has to be based on the experience and the knowledge acquired in the fields specified, and they need not be associated with any qualification requirements[12] as contemplated in the scheme of the enactment[13]. Therefore, the evidence in the present case can be a person with the knowledge of the subject, which aligns itself with the interpretation which attaches to the interpretation of the "person skilled in the art" in the context of the Intellectual Property Right protection, especially in Patents and Designs.

Further, the usual settled jurisprudence and the quality and criterion for analysing prior publication is by "a person skilled in the art", whereby the role of such a person is usually borne by the Court and the Judges themselves[14]. It should be noted, however, that the quality of the required prior publication can only be judged if the role is undertaken by someone with such knowledge and experience[15]. Therefore, the determinations required to foreshadow the prior publication usually requires for the same to be determined rigidly and with extreme accuracy, in order to ensure the prevention of

retroactively of such determinations. Further, the expert evidence also assists the Court in reaching workable and practical solutions concerning the matters of science, art and the impressions therein. The matters which have been mentioned concern the hand and finger impressions, along with the handwriting experts' opinions. The Courts have adopted a more scientific and workable manner of determination of the expert matters. The opinions of the various experts, such as medical experts, ballistic experts, fingerprint experts, handwriting experts and such other experts are often sought to ensure the scientific and workable aspect of the decision making and adjudication.

The value or the probative weightage which can be assigned to the opinion of each case differs on the basis of the facts and the circumstances of each case[16]. The Courts are not bound by the medical or the expert evidence u/s. 39 of the Bharatiya Sakshya Adhiniyam, 2023. The Court has to form an opinion independent while also being considerate of the expert evidence. The Courts are required to be judges of the logic imputable. It has to be ensured that an opinion which remains completely bereft of the logic and/ or objectivity, the Court is not obliged to go by what the expert opinion suggests[17]. Thus, the role of the expert evidence and witnesses ensures objectivity and the scientific reasoning and probability of a certain resulting factor being ruled out or considered extremely probable.

In the context of Designs Act, 2000, the requirement of ensuring that the design (within the meaning of S. 2 (d) of the Act) is not published prior to the date of the registration and the date from which the copyright in design protection is being enjoyed by the Registered Proprietor. The document or the publication in writing claimed to be the "prior publication" should be of such a nature that the "person skilled in the art" should be able to make the design in his mind's eye without the need of employing any further need for experimentation. The priorly published document which claimed to be the

"publication by writing" should provide the instructions or such a quality of information that the design becomes completely reproduceable by the other persons. The requirement of any further need of experimentation being precluded is essential, because otherwise the contours of "publication" would be too broad and ambiguous, so as to bring any kind of undescriptive publication be enough to frustrate the registrability of the design of the applicant/ the design protection enjoyed by the Registered Proprietor.

Orthographic View of Product Designing

The art of product designing directly hits the protection for the copyright in design enjoyed by the person. The product designing of any product works on the various scientific determinations of the volume of the product and the proportional dimensions which support the volume of the product. The product designing requires and employs the use of the orthographic measurements and the orthography techniques so as to provide the precise calculations for the proportional volume and the dimensions of the product. The product designing technique employs a complex congregation of the visual and semi-visual dimensions[18]. A proper employment of the technique enables the persons to create the product from such measurements while ensuring the accuracy in the most profound sense, along with the preclusion of any visual illusions from plaguing the design creation and product making[19]. The orthographic measurements provide a detail of the product, including the angles, vertex, surface, curves, scale, radius, proportional volume, and such other various measurements, while having the consideration of the same on a three-dimensional plane containing the XYZ axis. The orthographic view of product designing employs the manner of product creation whereby the external features and the intricate details of design production and application are traversed into. The orthographic manner of product designing employs the combination and ascertainment at the various levels, such as the top view, elevation view and the side view – which all have

to be present on a three-dimensional plane[20]. Similar to the employment of the three views of product creation, the one of the other techniques which the design innovation and product creation utilizes relates to the corresponding three-dimensional view of the product. The technique of providing three-dimensional view of the product enables the creators a record of the manner in which the product has been designed, as far as three-dimensional elements and production of the same is concerned[21]. While utilising the three-dimensional view method of the creation, the components of ascertaining such view are the isometry view and the perspective view, whereby the latter works on the illusions and the visual manner of look in the product[22].

The design creation and the product management ascertain the manner of product creation with the design on the product, whereby the position that remains is that the two-dimensional product design on a XY axis plane might not be the proper representation of the three-dimensional product look on an XYZ axis[23]. Furthermore, the components of the product designing such as angles, vertex, proportional volume and dimensions cannot be ascertained and determined with any accuracy without the production of the actual product on which such design has been employed. The orthographic view culminates into a position that the isometry view of the product with the design employed on the surface or the creation, might have complete utilisation of parallel lines and such other angular correspondences, however such isometry view of the product gets plagued due to the perspective view which usually employs on two-dimensional and/ or three-dimensional plane[24]. The isometry view, whereby the actual usage of parallel lines and angular correspondences is produced with accuracy, the perspective view which might not necessarily employ parallel lines and such other angular correspondences, but rather depend upon the visual manner and perception to the naked eye of the product. Due to the gap in the manner of representation of a product on a three-dimensional plane, the

product designing and design creation becomes an arduous task which depends on the accuracy to the littlest and smallest of micro-millimetres[25].

Orthographic View in relation to Prior Publication in Designs

The determination of Prior Publication in Designs Act, 2000 has a huge bearing while determining the registrability of a design[26] and also ascertaining the cancellation petitions filed against the registered design before the Controller of Patents and Designs[27]. The presence of the requirement of determine the prior publication develops from the provisions concerning the subject-matter of design protection and the provisions enabling the filing of cancellation proceedings against a registered design before the Controller of Patents and Designs[28].

It is a settled principle of law that the sterling quality of publication required to frustrate a design registration or cancel the registration of design has to be of such a satisfaction that a person having skill in the art should be able to perceive the design on the article in his mind's eye, without the need of applying any further experimentations[29]. The position is well-settled through a myriad of judicial pronouncements concerning the same. In the leading case of **Gopal Glass Works Ltd. v. Assistant Controller of Patents & Designs**[30], the Hon'ble Calcutta High Court held that the following-

43. *If the visual effect of the pattern, the shape or the combination of the pattern, shape, dimension, colour scheme, if any, are not clear from the picture illustrations, the novelty cannot be said to have been destroyed by prior publication, unless there* are clear and unmistakable directions to make an article which is the same or similar enough to the impugned design.

[Emphasis Supplied]

Furthermore, it has to be noted that distinction between registration in India and prior publication in any part of the World or India demarcates a clear distinction, and therefore

mere registration in any foreign country cannot be termed to constitute prior publication within the meaning of the Act[31].

In the case of **Bharat Glass Tube Ltd. v. Gopal Glass Works Ltd.**[32], the Hon'ble Supreme Court has observed the requirement of ensuring that the articles and the designs should be preferably produced before the Court in order to properly appreciate the appeal to eye of the article vis-à-vis the similarity in the impugned design and the priorly published design. The same approach is required to be adopted in order to ensure that the impugned design is not unfairly prejudiced by the alleged priorly published design[33]. The same becomes an exponential consideration in light of the fact that the prior publication in the foreign country, other than India, is a ground for cancellation of the registration of the design, as u/s. 19 of the Act, 2000. The distinction between the registration and prior publication, thus, plays an exponential role in ensuring that the design registrations are not subjected to unreasonable prejudices. The interpretation and the requirement of drawing such a distinguishment is essential[34] to ensure the legislative intent being sacrosanct.

The orthographic measurement and technique of product creation employs the usage and demarcation of the angles, vertex, proportional volumes and such other intricate details which have to be accurate to the units of micro-millimetres[35]. The accuracy and the detail of the product creation and designing herein is essential in light of the requirement of prior publication required. The orthographic technique along with the orthographic measurements being present on the designs and the articles created with the design applied, can aid the Courts in upholding the demarcation clearly laid down by the legislative intent, whereby the distinction remains at the forefront of design litigations and adjudications. The orthographic measurements and employment of such techniques can aid in providing the "unmistakable directions" which can enable the making of the impugned design on the basis of the design claimed to be priorly published.

Conclusions and Suggestions

The concept of prior publication under the Designs Act, 2000, occupies a crucial place in deciding the validity and enforceability of design rights. The position and the essential feature of the same has been time and again adjudged by the Courts, with the interpretations flowing from the ratio in the cases of Gopal Glass Works Ltd. and Bharat Glass Tube Ltd. The position culminates that both the judgments underscore the necessity of rigorous scrutiny to ascertain whether a design has been made available to the public in a manner sufficient to undermine its novelty.

Nonetheless, such judicial pronouncements, apart from showing gaps in efficiently deciding claims of prior publication for design registration and design cancellation, also reveal their inefficiency in an institutionalised and standardised methodology. The current system works on the mannerism of employment of a rather subjective assessment (which is made by the Judges and Court), wherein the inconsistency and obscurity plaguing such an interpretation can unfairly prejudice the rights of the registered proprietor. The probable solution rests in the use of orthographic measurements in the product creation documentation and representation of designing a product is the sensible and efficient solution. Orthographic projections, including accurate dimensional measurements and detailed views, give an objective basis for comparing designs and evaluating their novelty. Orthographic documentation ensures clarity in defining the scope of a design and its distinguishing features. The utilisation of such orthographic measurements while adjudging the cancellation of registrations and the registrability of the design, might lead to a reduction and mitigation concerning the disputes on interpretive differences on the visual representation of a design. In cases of alleged prior publication, orthographic measurements and techniques can serve as clear evidence, enabling adjudicators to make informed decisions not being constrained by subjective interpretations or incomplete visual

disclosures. The utilisation of the same is in clear congruence with the general policy of the Designs Act, 2000, which aims to protect innovative designs and prevent the misuse of design registrations. The utilisation and the incorporation of orthographic measurements as a mandatory part of the design registration and litigation process would ensure a balance in the exclusionary rights enjoyed by the registered proprietor while ensuring that the unfair prejudice caused by uncertain determinations and lack of an actual "person skilled in the art" do not reduce the reliance on the protection regime for Industrial Designs. In a nutshell, the incorporation and reference to the expert evidence on the orthographic measurements to account in the assessment of prior publication could potentially impart a robust mechanism through which the adjudicatory process can be strengthened. The consideration, while bridging the gap between legal interpretation and technical precision, ensures that the statute achieves its dual objectives-innovation and safeguarding actual Intellectual Property Rights.

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Merger of Air-India and Vistara: A Legal Study

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Abstract:

The Merger of Air India and Vistara has significantly impacted the Indian aviation industry, potentially altering market dynamics, improving operational effectiveness, and broadening market penetration. The Merger's legal, economic, and competitive aspects are examined using the Competition Act of 2002. The study analyzes market concentration, customer welfare, and anti-competitive behavior. The Merger's voluntary pledges to reduce competition, such as capacity maintenance and route modifications, are also examined. The Herfindahl-Hirschman Index reveals significant market overlaps, raising concerns about duopolistic tendencies and fewer consumer options. The paper emphasizes the need for proactive steps and regulatory scrutiny to balance consolidation advantages with fair competition. The study underscores the importance of removing structural obstacles, encouraging new competitors, and protecting consumer interests to maintain a competitive aviation industry in India. Although historic, it can be a model for future consolidation tactics in oligopolistic and capital-intensive businesses.

Keywords: Air-India, Vistara, Competition Act, Indian Aviation Industry, Competition Commission Of India(CCI), Directorate General of Civil Aviation (DGCA), Merger,

Introduction:

The Indian aviation sector is one of the fastest-growing industries[1] in the country, it contributes significantly to economic development and connectivity. Over the past two

decades, it has undergone a transformative journey driven by liberalization, technological advancements and a rapidly growing economy. With increasing numbers of people opting for air travel, the sector has emerged as a key driver of India's economic growth, offering immense potential for employment generation, trade facilitation and tourism development. India's aviation market is characterized by a mix of domestic and international airlines, with players like Indigo, Air India, SpiceJet and Vistara dominating the skies. The government's introduction of initiatives such as UDAN (Ude Desh ka Aam Naagrik) has further democratized air travel, connecting more miniature cities and towns with major urban hubs. The result has been a remarkable increase in passenger traffic, positioning India as the third-largest domestic aviation market globally, with projections to become the largest by 2030.

The aviation industry's growth has also brought significant competition challenges. Market concentration, pricing strategies and entry barriers have raised concerns about fair competition. The role of regulatory bodies such as the Directorate General of Civil Aviation (DGCA)[2] and the Competition Commission of India (CCI) has become increasingly critical in ensuring a level playing field for all market participants. As the sector evolves, fostering healthy competition and addressing structural issues will be essential to sustaining its growth trajectory.

Concept of Mergers and Acquisitions:

A firm has many situations, such as a business performance rollercoaster that results in profit or loss. Some businesses have performed so well from the beginning that they can make money by gaining market share and stockholders and becoming well-known to the general public. This is akin to a period of rapid expansion for the business, or, to put it another way, reaching its goals. Nevertheless, some businesses fail in their company operations from the start and don't proceed according to their plans, which results in losses. Such a business will eventually enter the dissolution phase, and

one of the well-known and highly valued strategies to keep them afloat is "Mergers and Acquisitions." Suppose one business goes well and another does not. In that case, the better-positioned business will start a merger or acquisition process to save the failing business and save it from going out of business.

A transaction known as a merger or acquisition occurs when two businesses unite to create a larger organization. It is how businesses come together to form a new or distinct company. A business acquires another business by developing its activities to make an acquisition. A merger occurs when two separate entities unite to create a new, merged organization. Conversely, an acquisition happens when one business buys out another. A business may buy out and completely absorb another business, combine with another business to create a new firm, acquire some or all of its significant assets, offer to buy its stock or launch a hostile takeover. The goals of a merger can include increasing market share, entering new markets, lowering operating costs, increasing revenues, and widening profit margins. The participants in a contract usually respect one another as equals and have comparable sizes and operational scopes.

Kinds of Merger:

According to the Business perspective, there are five kinds of Merger which are different from each other. Here it is,

1. ***Horizontal****:* When two companies in the same industry merge or acquire each other. This type of M&A is often used to increase market share and reduce competition. In other words, Horizontal mergers are often used as a way for a company to increase its market share by merging with a competing company.
2. **Vertical**: when a company acquires another company that operates in a different stage of the supply chain. This type of M&A is often used to increase efficiency and reduce costs. In other words, when two firms are merged along the value-chain, such as a manufacturer merging with a

supplier. Vertical mergers are often used as a way to gain a competitive advantage within the marketplace.

3. ***Conglomerate***: It is a merger between two entities which are in unrelated industries to each other. The principal reason for a conglomerate merger is utilization of financial resources, enlargement of debt capacity, and increase in the value of outstanding shares by increased leverage and earnings per share, and by lowering the average cost of capital[3].

Therefore, in the current scenario Air-India and Vistara opt for a merger which would be classified as a *Horizontal Merger* and would be regulated under the Competition Act, 2002[4] and other parallel laws. For the past few years, Air-India has been facing a financial crisis in the Indian Aviation market any company has facing difficulties in financial crisis[5]. The Vistara is full-service airline, with the joint venture of Singapore Airlines and Tata Sons Ltd[6]. Their service offers business class, premium economy class and economy class. So they are known for premium service and innovative concept. Hence, this merger will be a turning point and best way to save the Air-India, helps to sustain in the market.

Players in the Competition:

Air India[7], despite facing financial difficulties, is the most reliable airline in India. Despite its financial struggles, it ranks third in terms of passengers carried and largest in terms of international passengers. Established in 1932, it became the first Asian airline to add a jet aircraft in 1960. Air India is a full-service airline with its primary hub at Indira Gandhi International Airport and a secondary hub at Chhatrapati Shivaji International Airport. It joined the Star Alliance in 2014 and has three major advantages: financial backing from the government, being the default airline for government and public sector employees, and a large fleet of 167 planes under the Star Alliance consortium. However, Air India's main weakness is its inability to change, a lack of effective

technology use, patchy customer service, and low overall satisfaction.

A full-service airline is **Vistara**[8]. SIA and Tata Sons Ltd. are partners in the joint venture. With a 51 percent share, Tata Sons is the largest stakeholder, followed by SIA with a 49 percent stake. In 1994 and 2000, the Tatas and SIA attempted to enter the Indian aviation business, but were unsuccessful. These two significant players in the business finally teamed up in 2012 when limits on foreign investment changed. Tata SIA Airlines Limited, Vistara's parent business, was established on November 5, 2013, and on January 9, 2015, the airline's inaugural flight was conducted.

IndiGo[9], a leading budget carrier, has dominated the Indian market by offering no-frills flights across 54 domestic routes and over 1,300 daily flights. With a 231 fleet of planes, it offers a simple value proposition of cheap, excellent network, and pay for extras. However, it lacks the backing of a major industry house and lacks differentiation in economy class seats, potentially making it unattractive to discerning passengers.

The fourth-biggest airline in India, **SpiceJet**[10], flies to 54 locations every day on 100 aircraft. It is a low-cost airline that was founded in 2005 and is comparable to IndiGo. Hyderabad, Kolkata, Delhi and Mumbai are important hubs. SpiceJet's fleet consists of Bombardier Q 400s and Boeing 737-800 MAXs, which support the airline's low cost structure and offer greater maintenance efficiency. SpiceJet, however, lacks a strong strategy for differentiation and could be subject to price wars and excessive expenses. Existing airlines have benefited from Jet Airways' recent departure.

The operations of **GoAir**[11] began in November 2005. The Wadia Group is involved in this aviation endeavor. Like SpiceJet and IndiGo, it operates as a low-cost airline with the goal of providing passengers with fares that are marginally more expensive than those of the Indian Railways. There are currently 24 domestic destinations served by GoAir. GoAir has

very little space to stand out in a crowded market with two other, bigger competitors in the same low-cost sector. GoAir's on-time performance is its unique selling point.

AirAsia[12], a budget airline founded in 2013, is the largest airline in Malaysia and the second of the Tata group to operate in India. It operates at a cost of US$0.023 per available seat kilometre and has a 52% passenger breakeven load factor. AirAsia has been rated as the world's best low-cost carrier in international travel and airline awards. As of May 2017, AirAsia India was the fourth largest low-cost carrier in India, with a market share of 3.3%. The airline's strength lies in its promoter, AirAsia Malaysia, which has extensive experience in international markets. AirAsia operates 164 daily flights, covering 19 destinations and bringing 25,000 passengers.

Approval Of Air-India and Vistara Mergers:

On 18th April 2023, the Competition Commission of India, hereinafter Commission, received a notice under section 6(2) of Competition Act, 2002[13] given by the TATA Sons Pvt Ltd, Singapore Airlines Limited, Air India Limited, Tata SIA Airline Limited, which is Vistara. In this case, Talace Private Limited is the notifying party. As airlines look to streamline[14] operations and cut costs, mergers between airlines are becoming more frequent. However, airline mergers can also raise worries about the status of the industry because fewer rivals translate into higher pricing and worse customer service for consumers. India's competition legislation is enforced by the Competition Commission of India (CCI). The CCI takes into account a number of issues while evaluating[15] an airline merger, including the impact on competition, consumer demand, and the aviation industry overall. Reduced competition on domestic and international routes, competitor foreclosure, and increased airline cooperation are some of the possible competitive challenges raised by this. On 1st September, 2023, the Commission approved[16] the merger of Air-India and Vistara, with some modification.

Impact on Competition in Market:

Since the Commission had Approved the merger of Air-India and Vistara, the Commission must have assessed the impact of the market when such a combination happens. The effects of the merger on consumer welfare and airline industry competition will be affected. The complication of this effect, will lead to Adverse effect on competition in the Aviation Industry. In Section 20 of the Competition Act, 2002[17], specifies factors determining the appreciable adverse effect on competition (AAEC) in the aviation sector were not considered by the CCI. In this industry, there are few players[18] in the market and GoFirst declared bankruptcy[19] recently. It is known that this industry is an oligopoly market, with primary players among, for a long time, Indigo has dominated the market. Furthermore, Spicejet is been down for few months and GoFirst's insolvency proceeding is going on, showing the difficulty of surviving in this market. Given that the combined company is now expected to be its main rival, it is quite probable that the Indian market will gradually transition to a duopoly. The main cause of this is the large sunk expenses and set operating costs that make it difficult to enter new markets. Furthermore, dominant firms' aggressive pricing has been a defining feature of this capital-intensive sector, making it challenging for players to survive in such a dynamic environment.

In the current CCI order, the aviation market was designated at the Origin & Destination (O&D) pair level, which involved examining market concentrations along the routes connecting the cities of departure and arrival. Finding the routes where Vistara and Air India overlapped was necessary for this. The overall market shares of the indicated routes in the domestic environment were found to vary from 85% (Delhi-Thiruvananthapuram) to 45% (Delhi-Goa, Bombay-Hyderabad, etc.). Therefore, in nearly all domestic O&D pairings, the combined entity's market share was greater than 50% based on passengers traveled, although in 16

domestic O&D pairs, it was between 40 and 50%. The Delhi-Singapore and Bombay-Singapore routes had nearly a 100% market share in the international routes. When direct and one-stop flights are viewed as interchangeable, the CCI discovered that the majority of foreign routes had a nearly 50% market share. Their market shares for both local and international routes were also thought to improve their standing in the markets for cargo and charter flights.

As a result, there was a strong indication of an appreciable adverse effect on competition (AAEC) due to the market concentrations. Accordingly, the notified companies received a Show Cause Notice under Section 29(1) of the Competition Act, 2002. The notifying companies' comments emphasized the reasons why an investigation should not be carried out, the high revenue requirements for market survival, and the losses suffered by Vistara and Air India that made the merger necessary. It highlighted Indigo's dominance in the market and the low entry barriers displayed by at least four or five competitors. It also claimed that the merged company had large market shares only in a small number of routes, for which they suggested changes, and that market concentration study based on Herfindahl-Hirschman Index (HHI)[20] indicators, which the CCI conducted, was pointless. Herfindahl-Hirschman Index, means when performing competitive analysis, economics can more especially, economic analysis tools has traditionally been given top priority. One such econometric technique that is frequently used by many competition regulators, including in India, as a gauge of market concentration is the Herfindahl-Hirschman Index (HHI).

In the regulation 25(1A) Combination Regulations' 2011[21] allows notifying companies to voluntarily alter their planned merger. For the domestic and international routes with concentrated market share, respectively, the combined company has voluntarily committed to maintaining a minimum yearly scheduled air passenger transport capacity.

CCI'S Observation:

In light of the market concentrations in specific O&D pairings, the CCI was pleased with the voluntary undertakings and required the combined company to maintain a "minimum capacity" with regard to its AAEC concerns. What this "minimum" will be is unknown, though. Since the combined company would be the sole supplier of business class services in the nation, the CCI had raised serious concerns in its prima facie report about the possibility of a monopoly developing in the business class market. Nevertheless, the CCI subsequently accepted the notified parties' contention that it is a dwindling domestic market sector due to the fact that low-cost carriers (LCC) offer supplementary services that are comparable to those offered in business class. However, it's unclear if the CCI thought that LCCs could replace the business class or if their customers made up such a little portion of the market that they couldn't be regarded a distinct sector.

Additionally, the CCI rejected its claim of entry barriers by citing the examples of recently entered companies Fly91[21], TruJet[22], and Akasa Air[23], which are expected to impose competitive restrictions on the combined company. However, the CCI agreed that Indigo should provide the largest competitive constraint, preventing the combined company from engaging in unjustified price increases. They were also reassured by the claim that they would not be able to reduce capacity because airport slots are distributed based on market strength. Last but not least, CCI emphasized the enhanced benefits to consumers that affiliated airlines, like the combined company, can offer while running hub and spoke networks, which is what the majority of airlines desire.

Conclusion:

A significant event in the history of the Indian aviation industry was reached with the merging of Air India and Vistara. By utilizing Vistara's reputation for premium-end services and operational effectiveness, this horizontal merger aims to alleviate Air India's financial difficulties. Although the

Competition Commission of India (CCI) has allowed the merger with some changes, it raises significant concerns over market dynamics, consumer welfare, and competition in a fiercely competitive and capital-intensive sector.

Due to its distinct oligopolistic structure, the Indian aviation market presents both opportunities and difficulties for this kind of combination. The potential for improved operating efficiency and connection is demonstrated by the merged entity's increased market share, particularly in specific domestic and international routes. But it also highlights worries about market concentration and the possibility of less competition, which might have negative effects on customers including increased costs and lower-quality services. The CCI's approval, subject to voluntary undertakings, represents a fair strategy meant to protect competition while permitting the merger to move forward. The regulatory body's attempts to make sure the merger doesn't result in anti-competitive practices are demonstrated by the obligation to maintain minimum capacities and handle market concentration issues. But it's unclear how effective these efforts will be in the long run, especially given the lack of competition and the potential for a duopolistic market structure where Indigo and the combined company dominate.

The merger also emphasizes the necessity of strict regulatory monitoring and a proactive strategy to promote competition in the aviation industry. Maintaining a robust and competitive market will require resolving structural hurdles, promoting new entrants, and making sure resources like airport slots are distributed fairly. The future of Indian aviation will also be greatly influenced by consumer-focused services, technology developments, and creative business models. In conclusion, even while the combination of Vistara and Air India is expected to improve customer services, increase market reach, and improve operational efficiency, it also calls for a careful strategy to handle any possible obstacles to competition. This merger is a test case for striking a balance

between consolidation and the values of fair competition and customer welfare in the Indian aviation industry, which is at a turning point. In addition to determining the combined entity's performance, how it handles these dynamics will influence the future course of the Indian aviation industry.

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Shielding Child Witnesses and Rethinking Cross-Examination in India

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Abstract:

Cross-examination is an important yet controversial part of the legal process in child sexual assault (CSA) cases. It is a great tool to verify the credibility of witnesses but often causes unnecessary stress, psychological trauma, and secondary victimization of child victims. This article makes recommendations that could help eliminate all these practices through the use of professional intermediaries who can assess children's ability to answer a question, the removal of repetitive and suggestive questioning, and restrictions on accusing child witnesses of "lying". This paper explores the problem with cross-examination in these cases, the way the courtroom environment appears to be set-up to bring out manipulated children's evidence and bullying questions, and techniques of leading and suggesting. The research uses a doctrinal research methodology to examine cross-examination's effect on child victims through case law, legislative statutes, and psychological research. There is also a comparative legal analysis to see best practices from those jurisdictions that have used child-sensitive procedures. Major research shows that aggressive cross-examinations distort testimony, create re-traumatization, and discourage victim participation in the justice system.

Key words: Cross examinations, child witness, victims, witness.

Research methodology:

Using a doctrinal research methodology, this study critically examines existing law both substantive and procedural along with case laws and literature related to the child witness protection. This research attempts to assess the effectiveness of the existing safeguards for children witnesses during cross-examination through national and international legal framework. A comparative legal analysis is conducted to find best practices in different jurisdictions, particularly focusing on that of India and the United States. Using this approach legal gaps can be identified and suggestions can be made for reforms in order to make the protection of child witnesses effective.

Objectives:

1. To Analyze the challenges of cross-examination in CSA cases
2. To evaluate the legal framework in India and other jurisdictions
3. To examine courtroom dynamics and procedural safeguards
4. To assess the role of the judiciary and legal practitioners

Introduction:

No child is more exposed than a child who is forced to testify against his or her abuser, and it is this dilemma of the paper that examines how attorneys and the judicial system help protect children in peril. Because the child could be the sole witness to the act, his or her testimony is often highly critical. Without it, the abuser could get away with it and continue on, perhaps even targeting the same child again. Requiring the child to testify, however, may put them at danger of more damage[1]. They have to face their abuser and endure the rigorous scrutiny of cross-examination in a courtroom, which can feel like a secondary assault, in addition to going through the trauma of abuse.[2]

All the accused individuals, even those suspected of abusing children, are considered innocent until they are proved guilty beyond a reasonable doubt, as the Indian legal system dictates. In order to ensure that a trial be fair, the people are provided with fundamental rights under the Constitution, including the right to confront their accusers and examine their witnesses. However, there is also a possibility of leading questions or suggestive questions compelling a child's testimony, which may lead to wrongful convictions.

This paper will: (1) look at Indian laws pertaining to the rights of the accused and how they apply to child witnesses in court; (2) evaluate current laws, court processes and safeguards for child witnesses that respect the accused's constitutional rights; (3) suggest more reforms for important parties to reduce the trauma experienced by child witnesses while preserving judicial justice; and (4) push for legislative changes to make use of more government funding for child protection in court proceedings.

II. Right to Confrontation of the Accused

The right to a fair trial, enshrined in Article 21 of the Indian Constitution, guarantees the accused the ability to cross-examine witnesses. However, this right must be balanced against the need to shield child victims from undue distress. In *Sakshi v. Union of India*[3], the Supreme Court of India recognized this delicate balance, allowing video conference testimony to protect minor witnesses from direct confrontation with their alleged abusers..

A landmark U.S. case, *Maryland v. Craig*[4], further underscores this conflict. The U.S. Supreme Court, in a narrow 5–4 ruling, upheld a procedural statute allowing child witnesses in abuse cases to testify via one-way closed-circuit television. The Court acknowledged the state’s compelling interest in shielding minors from further trauma and humiliation, ruling that, in specific circumstances, this protection could outweigh a defendant’s right to face their accuser directly. For this exception to apply, courts must

conduct a case-specific inquiry to establish that the child's trauma stems primarily from the presence of the accused rather than the courtroom setting itself.

Despite *Craig* being deemed constitutionally valid, its application was later overturned due to insufficient case-specific findings. Similarly, India's *Protection of Children from Sexual Offences (POCSO) Act, 2012*[5] incorporates provisions aimed at mitigating child witness trauma, including permitting video conferencing for testimony. Indian courts have progressively embraced a child-sensitive approach, recognizing the urgent need to balance justice with victim protection.

II. Role of Legislative Framework

A. Federal Statutes in the U.S. and Indian Adaptation

The U.S. enacted the Child Victims' and Child Witnesses' Rights (CVCWR) statute [6]in 1990 under the Crime Control Act, ensuring a balance between defendants' rights and child witness protection. Unlike Maryland v. Craig's [7]one-way closed-circuit television (CCTV) testimony, CVCWR mandates two-way CCTV for victims or witnesses under eighteen in cases of abuse or exploitation. Alternative testimony is allowed if: (i) extreme fear prevents testimony, (ii) expert testimony confirms risk of trauma, (iii) a mental/physical condition hinders testimony, or (iv) the defendant's conduct obstructs testimony. United States v. Garcia upheld this approach[8]. Additional safeguards include video depositions, sealed records, closed courtrooms, and child advocates.

B. State Statutes in the U.S. and Variations in Indian Law

U.S. state laws vary; some follow Craig, allowing one-way CCTV, while others adopt CVCWR's two-way system. California permits both methods based on trauma severity. Maryland requires proof of "serious emotional distress," whereas other states demand minimal evidence of undue distress. Connecticut enforces a stricter standard requiring clear, convincing evidence of a compelling need.

C. Scope of Offenses and Witness Protection

U.S. states differ in protections: some limit them to sexual abuse, while others include violent felonies. Age thresholds range from ten to thirteen. Some states allow pre-recorded or remote testimony, debating its effect on jury perceptions but upholding its validity.

India's POCSO covers all sexual offenses against minors. The Juvenile Justice (Care and Protection of Children) Act, 2015, and victim protection schemes extend safeguards to trafficking, kidnapping, and organized crime witnesses. Video testimony is allowed under CrPC, ensuring confrontation rights under Article 21 of the Constitution.

D. Procedural Accommodations for Child Witnesses

U.S. courts provide additional safeguards: Alabama permits leading questions for children under ten, California ensures age-appropriate questioning and limits harassment. Guardian ad litems or support persons assist child witnesses, and California's pilot program increased child participation in trials by 20%.

India's Delhi High Court Guidelines for Vulnerable Witnesses recommend child-sensitive procedures, appointing support persons, simplifying questioning, and allowing breaks. Courts enable children to testify with trusted adults or alternative settings to reduce intimidation. The Supreme Court urges flexibility in adversarial proceedings for vulnerable witnesses.

E. Multidisciplinary Teams and Judicial Sensitivity

The U.S. employs multidisciplinary teams of prosecutors, law enforcement, and social workers to prevent re-traumatization. Wisconsin requires judges to consider child psychology, ensure comfortable testimony settings, and remove disruptive individuals. California law mandates preventing psychological harm to child witnesses within legal and financial limits.

IV. Role of the Court:

The judiciary in India has significant discretion in trial proceedings. Apart from statutory provisions discussed earlier, courts can adopt measures to minimize stress, trauma, and fear for child witnesses, ensuring adherence to constitutional safeguards. Courts possess inherent powers to implement non-statutory procedures to protect child witnesses. Ensuring the child's comfort enhances their ability to provide complete and truthful testimony, strengthening their reliability as witnesses and supporting the court's truth-seeking function.

A. Guidance on Questioning

Anne Graffam Walker[9],states that Courts should familiarize themselves with its contents to encourage competent testimony from child witnesses and should urge legal practitioners to refer to it. However, courts must be cautious not to interfere excessively in questioning, as it may impact cross-examination. Leading questions are generally not permitted during direct examination, though courts have the discretion to allow them where necessary. In *State v. Brown*[10], the trial court permitted leading questions when a child witness, lacking full comprehension, could only testify that the accused "touched her," without grasping the prosecutor's effort to establish penetration. Leading questions may be appropriate when witnesses are very young or distressed. If the child is cooperative and articulate, leading questions are usually unnecessary.

B. Child-Friendly Courtroom Settings

Courtrooms can be intimidating, even for adults. For children, the experience can be particularly distressing due to their limited understanding of the proceedings and the weight of their testimony. Courts have the discretion to modify standard trial settings to accommodate child witnesses, such as allowing them to sit on a trusted adult's lap while testifying, take breaks during testimony, or use drawings and anatomical dolls to aid their statements. In *Commonwealth v. Amirault*[11], the court replaced the traditional witness stand with a child-

sized table and chair, with attorneys and the judge sitting nearby, while the accused remained at the counsel table. A parent sat behind the child, who was also allowed to bring a toy for comfort. The court permitted attorneys to whisper objections into a microphone rather than disrupting the child's testimony. The appellate court upheld these modifications, recognizing the judge's discretion in such cases. Defense attorneys may argue that these accommodations create undue sympathy for the child, potentially influencing the jury's perception of credibility. Certain actions by judges—such as displaying children's artwork in the courtroom, rewarding child witnesses with sweets, or escorting them personally—can be deemed partial and constitute judicial error. Courts must avoid commenting on the credibility of the witness while explaining special accommodations. In *State v. Suttles*[12], the trial judge's remarks on why the courtroom was closed, emphasizing the child witness's fear, led to the Tennessee Supreme Court reversing the ruling.

C. Closing Courtrooms to the Public and Media

Indian courts have the authority to restrict public and media access in certain cases, particularly those involving child witnesses. In exercising this power, courts must balance the need to protect the child with constitutional rights, including the accused's right to a public trial under Article 21 of the Indian Constitution and press freedom under Article 19(1)(a). The U.S. Supreme Court, in *Globe Newspapers Co. v. Superior Court*[13], ruled that mandatory courtroom closure during a minor's testimony violated First Amendment rights. However, courts may impose restrictions where a compelling governmental interest exists. Indian courts, under the POCSO Act and CrPC provisions, recognize the need for confidentiality in child-related cases. Courts must carefully assess the psychological impact on a child who is subjected to public scrutiny or live media coverage. Legal scholars argue that media should be barred, particularly during a child's testimony, to prevent undue trauma.

V. Role of the Public Prosecutor

The public prosecutor has the duty to ensure that all legal safeguards available under Indian law are applied and to urge the court to exercise its discretionary powers to reduce any distress faced by the child witness. The prosecutor can also take steps to enhance their interaction with the child, as detailed below. In India, POCSO mandates child-sensitive measures but implementation varies. Courts permit closed-circuit testimony in high-profile cases to prevent intimidation. Section 273 of the Code of Criminal Procedure (CrPC) allows exceptions to direct confrontation under POCSO. Courts assess trauma-based exemptions case-by-case

A. Preparing the Witness

Courtrooms can be intimidating for children. The prosecutor can ease their anxiety by familiarizing them with the court environment and legal process beforehand. This can be done by explaining trial proceedings in simple terms, arranging a visit to an empty courtroom, allowing the child to sit in the witness box and practice speaking into a microphone, and introducing them to the court staff. The court reporter may document the child's statements and provide a recording as a keepsake [14]to make them comfortable. The roles of different court officials should be explained.[15]

Experts suggest that very young children should simply be told that another lawyer will ask questions and that they should listen carefully before answering truthfully. They should also be assured that saying "I don't know" is acceptable, unlike in school where a teacher might expect a definite answer. Additionally, the child must be guided on how to respond to unclear or complex questions. Role-playing exercises using unrelated topics may help the child practice appropriate responses during cross-examination while avoiding any undue coaching[16].

B. Practice Interview on an Unrelated Topic

Research shows that children often try to please adults, sometimes answering questions they do not fully understand instead of admitting their confusion. A 1992 study by the National Institute of Justice [17]examined how practice interviews on unrelated topics could improve a child's ability to testify about a key event later. The study involved third and sixth-grade students witnessing two staged incidents. One event was used for practice, while the other was the subject of their final testimony.

Practice interviews were conducted in two ways: one group was only asked rapport-building questions, while the other received both rapport-building and cognitive interview techniques aimed at improving memory recall. Similarly, the final interviews also used two approaches—one using standard questioning and the other employing cognitive interview techniques, which involved guiding the child to reconstruct events systematically before narrating them.

C. Formulation of Questions

Public prosecutors must ensure that their questions are age-appropriate, using simple sentence structures and easily understandable words. Experts recommend avoiding complex or compound sentences, ensuring pronouns have clear references, and considering the child's cognitive limitations regarding time and dates.

For example, instead of asking a child to recall a specific date, a prosecutor might ask, "What were you wearing that day?" to determine the season or time of year. Similarly, "Where was your mother when this happened?" could help establish a timeframe. Children often misunderstand prepositions like "in" and "on," which can lead to misinterpretations[18]. In one case, a father was wrongly accused of sexual abuse when a child said, "Daddy put his hand in my bottom," when they actually meant "on." A better understanding of child psychology and linguistics can help

prosecutors frame questions that elicit clearer, more reliable responses.

D. Requests for Special Courtroom Accommodations

Public prosecutors should be aware of available courtroom accommodations that have been upheld in Indian judicial practice. They should advocate for necessary accommodations based on the child's needs, such as testifying via video conferencing to reduce stress, using a screen to shield the child from the accused, or allowing a trusted support person to be present.[19]

E. Special Arrangements for Counseling

Mental health support for child witnesses must not be overlooked. While the public prosecutor may not have the authority to mandate counseling[20], they should recognize its importance in ensuring the child's emotional well-being and effectiveness as a witness. State or district victim assistance programs may offer psychological counseling services that could benefit the child and strengthen their ability to testify effectively.[21]

VI. Recommendations

- Indian courts, prosecutors, and legislative bodies have taken a number of positive steps, but more changes are needed. It would be ideal to have a standard legal framework at the federal and state levels. While safeguards for a child's testimony are the focus of this discussion, comprehensive reforms must also address issues like the admissibility of hearsay evidence, expert testimony, and determining a child's competency to testify. In cases of abuse, the Indian judiciary placed an emphasis on child-friendly procedures in 2005.
- Adopting a multidisciplinary approach, prioritizing cases involving child witnesses, considering the child's well-being when ruling on adjournments, allowing leading questions in direct examination under court supervision, ensuring that cross-examination does not intimidate or confuse the child, allowing the child to testify from a

comfortable location rather than the witness stand, allowing a support person to be present during testimony, using child-friendly aids like anatomical dolls and drawings, allowing testimony through video The issue is that these measures are not implemented uniformly throughout India.

- While some states have adopted portions, others do not have procedural safeguards that focus on children. Prof. of legal studies in 2012 B. John E. Myers proposed a Child Witness Code for international adoption that adheres to the Indian legal framework in the following ways: (1) extending protections to all minors under the age of 18; (2) ensuring that child witnesses are protected from coercion, psychological distress, and undue influence; (3) prioritizing child-related cases in court dockets; (4) requiring written justification for delays in cases involving child victims; (5) establishing structured programs to prepare children for court appearances; (6) providing separate waiting areas for Financial resources are required for reform implementation. Change can be sparked by incentives from the central government.
- The Protection of Children from Sexual Offenses (POCSO) Act was enacted in 2005 and has served as a legal framework for protecting child witnesses and victims. However, difficulties with enforcement persist. Specialized child protection measures might be able to benefit from funding provided by initiatives like the Nirbhaya Fund. The Juvenile Justice (Care and Protection of Children) Amendment Act of 2021 aimed to strengthen child welfare structures; however, additional funding for child-friendly judicial procedures is required. State Commissions for the Protection of Child Rights (SCPCRs) and Child Welfare Committees (CWCs) ought to collaborate with legal authorities to advocate for child-sensitive trial procedures and guarantee fair trials for the accused. The rights of those accused of abuse must be

balanced with child protection in future reforms, which must be implemented uniformly across all states.

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E-Commerce and Intellectual Property

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Abstract –

As e-commerce continues to grow and digital technologies become more essential to business, intellectual property (IP) rights have become crucial in shaping the online marketplace. This research investigates the complexities of IP disputes within the e-commerce environment, looking at both legal and technological aspects. We examine how traditional IP rights, including copyright, trademark, and patent, interact with the fast-paced world of online commerce. This interaction often conflicts between rights holders, online platforms, and consumers. By analyzing case studies from major e-commerce platforms, we showcase examples of IP infringement, counterfeiting, and unauthorized use. Additionally, we emphasize the efficacy of current legal frameworks and alternative dispute resolution methods in addressing IP conflicts in the digital space. Ultimately, this research seeks to throw light on the complex relationship between e-commerce and IP rights, providing a extensive understanding of the challenges and potential solutions in this ever-evolving landscape.

Keywords - Internet, Intellectual Property, E e-commerce marketplace, Legal implications, Intermediaries Liability, Infringement, Digital Era, Drawbacks

Research Objectives

1. To shed light on how to promote innovation keep in balance with the virtual assets and maintain fairness in the Indian e-commerce era.

2. To examine the relevance and implications of the current legislative framework for handling with the issues in dynamically growing industry

Research Questions

1. What challenges do e-commerce companies face when trying to enforce IPRs in various jurisdictions, and how do these challenges influence their competitive edge?
2. How do e-commerce platforms tackle intellectual property infringement issues and which legal framework proves to be the most effective in dealing with these problems?
3. How do the existing Intellectual Property Laws affect the innovation strategies of e-commerce businesses in India?

Research Methodology

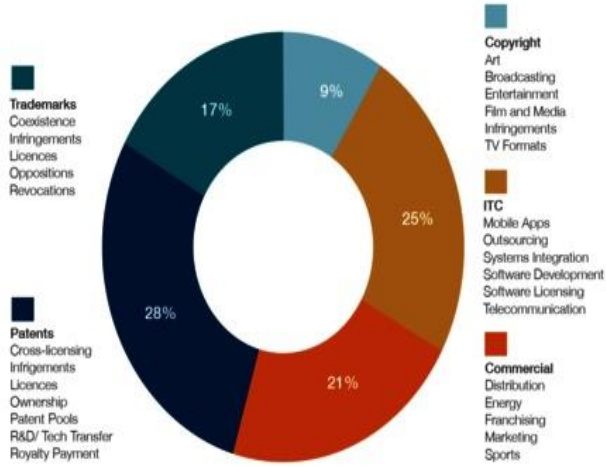
This research Paper's technique includes a review of essential legal sources, involving e-commerce laws and regulations. To add further, a few kinds of literature has been reviewed to provide a well-rounded knowledge of the subject, the research will also feature the comparative analysis of Indian legislation on e -e-commerce

Introduction

Intellectual Property (IP) plays a vital role in e-commerce, especially with the rapid expansion of online businesses and the digital market. It grants companies exclusive rights to utilize and profit from their creations or inventions, highlighting them to stand out from competitors, build brand identity, and secure a competitive value in the online market.[1] Key components such as trademarks, copyright protection, patent protection, trade secrets and measures against infringement are essential for this protection.

The term IP is legally linked to industrial property, encompassing copyrights and other related rights. India has agreed with the WTO to safeguard and enforce rights related to IP among member nations, aiming to minimize challenges and barriers to global trade.[2] The foundational elements of IP law

include Trademark, Patent, Design, Geographical Design, Copyright. Furthermore, certain Acts are passed to ensure the rights of Consumers. Modifications to the To effectively negotiate the revolution of e-commerce in India.[3]



Overview of Academic Sources

One of the most crucial and valuable aspects of e-commerce is intellectual property, yet it often goes underappreciated. In "E-commerce Framework for Consumers' Protection from E-commerce Fraud"[4] As e-commerce continues to grow, it is most important to overlook the consumer's protection. There is an increasing rise for better consumer safety measures. Recent technological advancements have significantly transformed the Indian market and impacted consumer behavior.[5] In the online realm, pricing dynamics are becoming more transparent. Protecting consumer rights is essential in this digital era. The liberalization policies in India, along with emerging technologies, are reshaping the economic sector.

Franco Rizzuto's 2012 article[6], delves into the legal responsibilities of online platforms such as eBay and Google regarding intellectual property violations. The piece highlights

significant cases from *ECJ* and investigates whether these platforms can evade liability under the E-Com Directive. In the *L'oreal & eBay case,* ECJ determined that eBay could be held responsible for permitting counterfeit goods over its platform if ebay was aware about the infringement. Conversely, in the Google case, the court held Google not being liable for trademarked keywords in advertisements, as the direct control over the ad content. Rizzuto provides a systematic review of these cases to elucidate how ECJ decisions influence intermediary liability, striking a balance between protecting intellectual property and fostering digital innovation. The article is commended for its comprehensive analysis, although its Eurocentric viewpoint may restrict its applicability to non-European jurisdictions. Overall, the work is a valuable resource for scholars, legal practitioners, and policymakers, though it could be enhanced by addressing potential revisions to the E-Commerce Directive.

Analytical Review of Intellectual Property in E-commerce

Intellectual property (IP) plays vital role e-commerce by safeguarding and protecting entities from unfair competition,

while also ensuring the smooth operation of the Internet and its technological infrastructure.[7] Online companies often depend on patent or product licensing, with many internet businesses.[8]

IP is vital for e-commerce as it offers protection for the intangible assets tied to online business activities. These rights allow businesses to create and uphold their unique Identity of the brands, preventing others from using similar or confusingly deceptive marks, and foster customer trust and loyalty.

Copyright protection secures original creative works, including website content, graphics, videos, and software code, while trade secrets ensure the confidentiality and exclusivity of these valuable assets. Enforcing such rights is necessary for protection of investments in the dynamics and maintenance of IP assets and for deterring potential infringers. IP rights safeguard the brand identity of e-commerce businesses, while patent protection allows companies to safeguard from misusing their patented inventions. Trade secret protection is important for helping businesses protecting their trade secrets confidentiality and exclusivity, blocking unauthorized access or use by competitors.

Nonetheless, there are challenges and criticisms regarding the role of IP in e-commerce, such as the complex and rapidly changing landscape of online commerce, difficulties in enforcing IPRs across international borders, affecting the abuse of IP laws, and concerns about how IP affects access to information and innovation. IPRs are essential for businesses to protect their trade secrets and gain a competitive edge.[9] Such rights are vital for protection issues like plagiarism and piracy, and they offer businesses a framework for safeguarding their unique innovations and design processes. Historically, the enforcement costs of rights have been acknowledged in natural law[10], with governments granting these rights to achieve various policy objectives Across India, ICF helps government agencies, development organizations, and private-sector companies navigate energy and climate change issues, build sustainable liveable cities, and

meet the area's growing needs as it continues to flourish. *(Anderson & Gallini, 1998)*.[11] Furthermore, these rights create a challenging environment which encourages innovation and the promotion of technology. The costs associated with these rights are influenced by the value in market and Required advantages of the innovation.

However, consequences of monopolization of creation and design processes by wealthy nations and powerful corporations brings a major threat to society. While countries like the US, with their extensive technical expertise, can protect rights related to the IP, excessive protection can lead to monopolies and stifle future knowledge development. Moreover, a purely economic viewpoint fails to fully capture the reasons behind the establishment of IP rights; thus, initiatives such as the international harmonization of software and business method patents are vital[12]. For organizations to effectively safeguard their brand's IPR on a global scale, intellectual property rights are indispensable.[13] The contemporary uniform intellectual property system offers a consistent legal framework that is less expensive and complex than previous systems, while also enhancing legal, technical, and international coordination.(W.e.f Table 1)

Aspect	Previous Structure	Current Uniform System
Legal Framework	Fragmented and inconsistent, leading to variations in interpretation and application.	Uniform and consistent, ensuring clarity and predictability in IP rights.
Expense	Higher costs due to the need to navigate multiple systems and jurisdictions.	Reduced costs through streamlined processes and a unified system.
Complexity	High complexity due to decentralized and disparate laws.	Simplified processes and procedures under a centralized framework.
Technical Coordination	Limited collaboration and lack of standardized technical protocols.	Improved coordination with standardized technical protocols.
International Coordination	Weak, with minimal alignment across jurisdictions, causing enforcement challenges.	Strong international alignment, facilitating cross-border IP enforcement.

(Table 1)

Trademark infringement

Infringement in Trademark happens when person uses a mark similar to a trademark which is already registered for products or amenities without the IP owner's consent. Such platforms often struggle to stop selling counterfeit products with well-known trademarks.

In the case of *Tiffany v. eBay (2010)*[14] legal dispute between Tiffany & Co. and eBay, the prestigious jewelry company sued eBay for contributory trademark infringement. Tiffany argued that eBay failed to adequately oversee or prevent the sale of counterfeit Tiffany items on its platform. However, the court ruled in favor of eBay, concluding that the company had taken reasonable measures to combat infringement and could not be held accountable for every instance of counterfeit products being sold.

Copyright Infringement

Copyright infringement happens when copyrighted materials, like pictures, works of literature, Opera, or vid., are used in absence of the IPR holder's consent. E-com websites often struggle to detect and eliminate listings that breach copyright laws. If these platforms permit users to upload copyrighted content without the necessary permissions, they could be held responsible for copyright infringement. With the growing ease of copying and sharing digital content, safeguarding copyrighted works online has become more of a task for businesses.

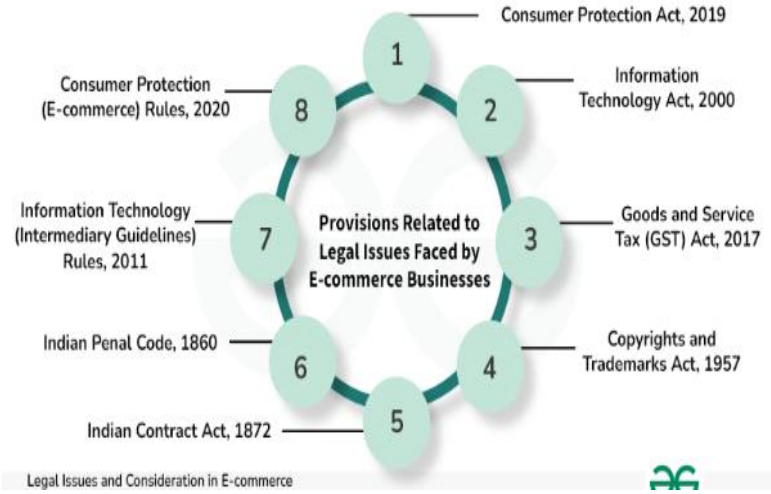
The court ruled in *Perfect 10 v. Google (2007):*[15] that Google's use of thumbnail images in its image search function fell under the fair use doctrine and did not constitute copyright infringement. This decision established that search engines and online platforms could utilize copyrighted images in specific contexts without requiring prior authorization from the copyright owner.

Patent

Infringement in Patent is explained as when an individual entity manufactures, utilizes, or sells a patented invention without the patent holder's authorization. E-com websites usually find face difficulties in regulating, the flow of such products and protecting the unauthorized use of technologies or methods. These challenges arise due to the vast number of listings and transactions, making it complex to ensure full compliance with patent regulations.

Case Law:

In the case of *Soverain Software v. Newegg (2013)*[16], Soverain Software filed a lawsuit against Newegg, an online retailer, alleging infringement of its patents which involved the technology of online shopping cart. However, the judiciary determined that patent claims were excessively broad and, Hence invalid.



Role & Liability of Intermediaries

Intermediaries, as outlined in *section 2 (w) of the IT Act 2002,* encompass a range of entities including e-commerce platforms, internet service providers, and online marketplaces. *Section 79* of the IT Act provides these intermediaries with a *"safe harbor"* from a third-party content on their platforms, if

they adhere to specific conditions. These conditions require intermediaries to maintain a passive role, meaning they should not initiate the transmission of information or select its recipient *Section 79(1).* Additionally, they must focus on principles in their operations *(Section 79(2)* and implement a notice-and-take-down procedure, which obligates them to remove any content which is infringing, once they are aware of it *(Section 79(3)*. This framework ensures the balance between protecting IPRs and addressing the operational challenges faced by intermediaries.[17]

In *Super Cassettes Industries Ltd. v. Myspace Inc.*[18]., it was determined that intermediaries are not completely shielded under *Section 79* and must initiate the required steps once they become aware of infringing content. Similarly, in *Christian Louboutin v. Nakul Bajaj*[19], the court found that e-commerce platforms cannot escape liability if they actively support or facilitate illegal activities, highlighting the responsibility of intermediaries to prevent IP violations on their platforms. The *Kent RO Systems Ltd. v. Amit Kotak*[20] case followed the Myspace ruling, stating that intermediaries are not obligated to independently seek out infringing content but must respond to complaints from IP rights holders. In *Amazon Seller Services Private limited. v. Modicare Ltd*[21]., the High Court of Delhi clarified that the provision of value-added services by intermediaries does not compromise their protections as safe harbor under *Section 79,* stressing their ongoing duty to adhere to IP laws.

Conclusion

E-commerce has emerged as a dynamic platform for businesses, offering unique opportunities for significant growth. But this quick growth has also translated into new intellectual property (IP) protection challenges, both for India and globally. These infringements not only threaten the revenue and reputation of rights holders but also the health and well-being of consumers, with the possibility of damaging the reputation of e-commerce platforms themselves. As they play a

critical role, e-commerce platforms are leading the way in creating approaches to detect, prevent, and remedy IP infringements. Encouraged by national legislation and international treaties, these platforms are increasingly using technological and policy interventions to deter infringement activity. India boasts a strong legal system that protects rights like copyrights, trademarks, patents, and IT Act provisions. But implementation of these rights is usually wanting, especially when there is a question of jurisdiction and it is hard to determine online infringers. The cases cited in this article have prompted the courts to define the roles of e-commerce websites in curbing infringement of intellectual property rights and set a precedent for future enforcement proceedings. This situation calls for a systematic approach to IP enforcement in the e-commerce industry, focusing on cooperation between IP rights holders and e-commerce platforms. Such cooperation can lead to faster removal of infringing listings and promote proactive action. New technology developments, including digital watermarking and AI-based detection, are likely to greatly enhance the way that businesses and platforms track and protect their rights so that they can more effectively respond to new and creative types of infringement. There is a need to create awareness among consumers regarding the danger associated with products bearing infringing marks, as well as to create awareness about the benefits of selecting genuine products, in an effort to curtail the demand for counterfeit products effectively. Concurrently, we need to reform the legislation that deals with the intricacies of digital violations, particularly in an e-commerce context where laws are constantly evolving and need to be flexible enough to safeguard intellectual property in the digital space. This will probably involve amending current legislation and establishing new forms of IP rights, as well as enhancing international cooperation to address cross-border violations.

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Digitisation of Prison Administration in India - Justice for Undertrials

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Abstract:
This paper examines the critical role of digitizing prison administration to address the challenges of overcrowding and slow judicial processes, with a focus on undertrial prisoners who make up the majority of India's prison population. Undertrials face prolonged detentions and limited access to legal resources, issues exacerbated by systemic inefficiencies. The integration of digital services in prison administration can enhance efficiency, reduce delays, and improve access to legal assistance. By implementing digital solutions, including case tracking, legal aid platforms, and surveillance systems, this research explores how digitization can protect detainees' rights, minimize corruption, and streamline judicial processes. This study also addresses a key research gap by highlighting the potential of digitization to transform prison administration, offering a strategic framework for integrating digital reforms in India's correctional system to create a more just and effective justice system.

Keywords: Digitisation, Prison administration, Human Rights, Undertrial Review Committee (UTRC).

Introduction:

The Indian prison system has historically suffered from inefficiency, corruption and human rights abuse that gives rise to a critical mandate for reforming the system. An essential requirement for tackling these problems is digitisation of the prison management process. Digitization of prison administration in India is a significant step which has the

potential to make the system more efficient, transparent and accountable thereby providing justice to undertrials. India's prison administration has been facing the prolonged issue of detention of undertrial prisoners for longer period of time and judiciary is struggling to address the prison overcrowding long pre-trial detentions, and limited access to legal resources for inmates. The Supreme Court and various High Courts in addressing these challenges have rulings that emphasises the constitutional rights of detainees, particularly undertrial prisoners for fair and speedy trials. Undertrial prisoners are those who detained and is awaiting trial. These detainees are often kept in custody for longer period of time leading to severe human rights violations. As per the reports nearly two-thirds of the inmate population are filled with undertrial detainees which is 78.01 percent of total prison inmates[1]. The digitisation of prison management can effectively decrease paper-intensive record-keeping and data- entry work, thus releasing up resources for more important jobs. Automating routine work, including the management of prison admissions, inmate supervision and grievance registration, can help to lessen the burden under which prison staff have to work, enabling them to devote more time to programmes promoting reintegration of prisoners. In addition, digitisation allows providing precision and reliability of the content, limiting the potential of manipulating and falsifying information. This, in turn, can help to prevent false imprisonments, reduce the number of undertrials, and ensure that those who are guilty are brought to justice in a timely manner[2].

One major benefit of digitization is its ability to reduce the efficacy of corruption and nepotism in the prison system. Digital platform use can promote transparency in the management of prisoners, eliminating the potential for unfair treatment (i.e., discrimination) and undue preference (i.e., tendency). For example, digital platforms can enable fair and open competition for the allocation of prison cells, limiting the room for corruption and favouritism. Moreover, digitising,

optionally at the source, can allow real-time control of prison activity, enabling rapid response in cases of infringement of human rights, or other irregularities. This new openness can be used to create trust among prisoners and prison staff and the judicial branch which, in turn will benefit a fairer and more impartial system.

Research Questions:

1. Can digitization of prison administration in India help with justice delivery and protecting the human rights of prisoners?
2. In what ways can the digitization process of prison administration in India aid undertrial prisoner candidates particularly with regard to problems of prolonged imprisonment?

Research Methodology:

Doctrinal research

Current challenges

I. Overcrowding and Prolonged Detention

Prisons are overwhelmed with mitigating offenders, especially undertrial prisoners who endure long waits due to resource constraint and systemic constraints. Lack of organization of case records and cumbersome nature of the judicial system also cause detainees to remain in the legal system much longer than is constitutional, denying them their rights as enshrined in the Indian Constitution Article 21 – which gives them the right to speedy trial. Upgrade on paper record and computerized management of case can transcend expectations in making drastic changes by helping to minimize the cases of arbitrary detention for a long time without judicial intercessions. Overcrowding of prison has been a chronic problem in Indian prisons and made worse by high levels of undertrial prisoners. NCRB has opined that about 70 percent of the Indian prisons are comprised of undertrial prisoners which result in overcrowding tremendously[3]. This overcrowding negates prisoners' human rights by depriving them of decent living, health, and rehabilitation needs. overcrowd has

worsened prison situation and prisoners wellbeing and that digitization could help to improve administrative work, control inmates population and utilize resources better.

According to the Singh and Dixit's study (2023) it is evident that there is an economic interaction in the Indian bail system that only detain people who cannot afford bail thereby discriminating the poor. This results in a cycle of imprisonment that may even overshadow the time that would have been served if the accused was convicted, thus violating their Article 21 of constitution which guarantees Right to Life and Personal liberty[4] . This has attracted criticism on the part of the judiciary on the prolongation of detentions as it noted that the current legal aid mechanism lacks adequate resource provisions to adequately represent the undertrial prisoner. The use of technology in delivering legal aid and notifying the undertrials of their rights could assist in decreasing the number of unnecessary long-term detentions[5]. A recent study which analysed the critical issue of pre-trial detention in India, identified approximately 280,000 individuals, known as 'undertrials,' who are imprisoned without conviction, often for prolonged periods. The study emphasized the concerning statistic that undertrials constitute two-thirds of India's prison population, a reflection of systemic failures in legal processes and prison management. It provided the recommendations for reforms which includes standardizing payment for legal aid lawyers to ensure competitive compensation and prompt payment, enhancing monitoring mechanisms, A computerized database for tracking undertrials is recommended to alert authorities about eligible releases, urged State governments to enforce guidelines for undertrial detention and hold officials accountable for non-compliance and Awareness programs in prisons are essential to inform undertrials about their legal rights and access to legal aid[6].

II. Ineffective Communication between Judiciary and Prison Administration

The communication gap between the judiciary and the prison administration in India is an issue with serious effects on the rights of undertrial prisoners, leading to unnecessary delay in justice and overcrowding. The courts and prison authority's functions have isolated domains, resulting delays in sharing critical case-related updates often results in which undertrials languish within the confines of prisons without timely hearing or bail.

In *Hussainara Khatoon v. Home Secretary, State of Bihar (1980),* the Supreme Court of India held that the right to a speedy trial is one of the fundamental right which can be interpreted under Article 21 of the Constitution, underscoring that prisoners should not be held due to administrative delays[7]. Yet due to poor communication all these issues of prison overcrowding, undertrial status and case progression are rarely in front of the judiciary which is also one barrier that hampers delivery of justice. Case processing inefficiencies are compounded by outdated systems that rely heavily on manual procedures, with little to no technological integration across judicial and prison administrative platforms.

In *Re: Inhuman Conditions in 1382 Prisons (2016)* exposed systemic failures leading to long-term displacement; the court's recommendations included reforming the coordination of judicial processes and prison administration through information technology, endorsing an initiative for digital records and real-time updates. Digital case-tracking tools and better information flow between these entities may help reduce fast track hearings for appropriate bail applications and status checks, thereby balancing the need for accountability with prisoners' rights to be heard on time for their learning. The E-Prisons project is one of the key initiatives under Digital India which aims to connect prisons with judicial systems, but there are still variations in data management and require a strong integration[8]. It has been mentioned that an ineffective communication infrastructure, digitized or not, still continues to hinder prisoner management

resulting in gross detention undermining the efficiency of criminal justice system. It indicates that although reforms are being undertaken, it is important to have a more harmonised digital infrastructure within the justice delivery system and prison systems in order to allow for effective exercise of legal rights of prisoners while facilitating on-time disposal of cases[9].

III. Lack of Transparency and Grievance Redressal Mechanisms

The inefficient functioning and absence of grievance redressal in Indian prisons have resulted in various critical problems, such as, human rights abuses, unaddressed complaints by prisoners and widespread distrust against the system. Studies show that, despite the many rights established for prisoners by the judiciary, their practical application by prison administration still lacking due to a long and bureaucratic enforcement process. In Sunil Batra v. Delhi Administration (1978), the Supreme Court underscored impartiality and accountability in prison administration, pointed out that prisoners should be treated in accordance with their constitutional rights and emphasized that grievance mechanisms should provide prompt relief to inmates facing abuses or injustices. Yet, many grievances filed by prisoners are either delayed or dismissed without proper investigation, reflecting a systemic failure in addressing inmate complaints.

In an study it has been mentioned that the employees of prisons are not trained well enough to handle cases of mistreatment, caused by lack of a digital system for lodging and tracking complaints within the administration[10]. Such digital redressal platforms may enable convicts and their families to file complaints directly before the appropriate agencies making it difficult for prison officials to suppress complaints from inmates. To increase transparency, projects such as the E-Prisons project under Digital India are aimed at digitising prison records and integrating them with the judiciary database. But while these initiatives certainly do work, their impact is minimal due to being implemented

inconsistently across states and inmates having little access to those systems[11]. transparent redressal mechanism embedded with digital tracking of complaints and periodic independent audits can address these systemic issues of both neglect and lack of accountability assuring at least the protection against arbitrary action against prisoners' rights and efficient grievance redressal[12].

Proposed Digital Solution for Indian Prisons

Automation of real-time case tracking and automatic notification systems are key in transitioning to better ways of managing prison administration, reducing delays and challenges faced by inmates when seeking a remedy for an infringement of their rights. Such digital solutions allow prison officials, judiciary members and inmates (or representatives) to access live case status updates regarding bail applications, court appearances and other aspects of judicial administration. These systems aim to bridge the communication void between judiciary and prison admin, reduce pendency of cases and increase transparency[13]. The real-time tracking systems in prisons can help to minimize the delay associated with the release of inmates and ensure timely information on court orders, bail statuses & parole applications preventing unnecessary extended detention. It can be linked with the e-courts initiative of the judiciary, so that court orders could reach prison administrations electronically to reduce human errors and save time. These case tracking systems would allow prisoners and their families to know the real-time information on case proceedings which could help them plan legal strategies for defence as well as reduce some mental stress from this uncertainty of legal outcome. Case tracking systems with real-time notifications could support and could expedite the processing time for cases by notifying relevant authorities immediately as case advancements occur or changes to laws are made. Such technology could make prison officials more accountable for their records by creating digital entries in each case update with clear audit trails. Furthermore, case tracking

solutions assist prison personnel in maintaining a better database of inmate records. Digitally preserving the inmate information, categories, etc., physically saves a lot and manages resource allocation in prisons where inmates belong to different background. The concept of "Prison Cloud" project in Belgium, which enabled better data sharing between courts and prison staff can be very well implemented in India[14]. This system could also send live alerts when a case surpasses a certain duration, signalling an immediate need for judicial review.

An Automated Grievance Redressal System (AGRS) in the administration of prisons may help make inmate grievance redressal much more effective, transparent and fairer. This computerized system allows inmates to file, grievances electronically, creating a paper trail of complaints that can be logged and tracked until action is taken[15]. Digital transformation of grievance redressal offers a substitute to the manual complaint processes that are susceptible to delays, skip or dismissal without thorough inquiry. Automated grievance systems in India, aligned with e-governance initiatives, would ensure compliance with prisoners' rights under Articles 21 and 14 of the Indian Constitution, which guarantee life, personal liberty, and equality before the law. These systems also align with the Supreme Court's guidelines from the case of S*unil Batra v. Delhi Administration* (1978), which emphasized the need for effective redressal mechanisms in prisons for legal redressal within jail premises so as not to allow mistreatment and violation of prisoners rights by prison staff[16]. an AGRS can ensure independent oversight and provide a record of each complaint's resolution status, thus making the prison administration accountable. The auto-grievance resolution system (AGRS) is a significant move towards digital prison governance and provides a sustainable digital grievance addressing solution, ensuring equitable and transparent grievance redress for the benefit of prison inmates and overall prison administration.

I. Centralized Database for Undertrial Prisoners

Real time records of all undertrial prisoners should be maintained by a centralized database integrated with respective state level systems. In addition, this database must include exhaustive information like charges filed, bail status, duration of detention and recommendations from Under trial Review Committees (UTRCs). By utilising real time data access, prison authorities, as well as judicial systems, are enabled to make timely decisions, identify eligible prisoners that can undergo review under Section 436A of CrPC and also put an end to prolonged detentions. However, auditing of this database should be made regular so that we can ensure integrity and usability of this database hence reducing errors and omissions. An automated mechanism to alert relevant stakeholders, specifically UTRC members, prison authorities and judicial officers, should be incorporated in the system within the cases that are eligible under Section 436A of CrPC should be incorporated. Notifications about cases that are approaching eligibility for review would reduce the delays resulting from oversight. UTRCs are required to operate through one dedicated online platform in each district[17]. Virtual meetings, as well as submission of recommendations and real-time tracking of implementation actions are the features these platforms should provide. Virtual accessibility removes both geographical and logistical barriers, especially for areas far removed from logistically challenging resources. UTRC members would have complete information on which to base informed decisions if UTRC integrated with other digital tools, like mobile applications for legal aid and centralized databases. Furthermore, these platforms are required to have transparent reporting mechanisms about which stakeholders are up to date on the progress.

II. Judicial Integration and Legal Aid application

The proposed digitization framework shall effortlessly connect with the already existing e-Courts system for direct interfacing between judiciary and the prison administration.

Such integration would ease case progress updates, eliminate hearings reminders and expedite resolution of cases. Using shared access allows judicial officers to maintain increased compliance oversight to enable UTRC recommendations to have less impact on orders. A mobile application for the use of undertrials prisoners should be developed to enhance access to justice. Such an app can give real time updates on case status, help improve communications between prisoners and legal aid lawyers and allow submissions for grievances redress department. The app also allows families of undertrial prisoners track case progress, bridging that communication gap. The system's usability is further increased with integration of UTRC systems and centralized databases so that all stakeholders are kept in the loop, and the digitization of prison administration should go hand in hand with broader correctional reform initiatives emphasizing rehabilitation and reintegration. If digitized data was used to analyse systemic weak points, it would provide data for the policy based decisions, and also could be used to perform research on what can correct these insufficient system. A holistic approach for accomplishing the systemic inefficiencies follows, where digital systems are aligned with reform initiatives[18]. A comprehensive adoption of these measures will not only digitize India's prison administration but also the delivery of justice to undertrial prisoners, based on systemic equity. Implementation challenges could be addressed if legislative mandates were combined with robust oversight, and if the initiative were brought into alignment with constitutional imperatives through technological integration.

Uniform Implementation Across States

Despite explicit Supreme Court guidelines, India's prison system remains burdened with the challenge of overcrowding inmates, and as with undertrial prisoners on that count, system is much worse. This issue have been highlighted in the report "Circle of Justice: National Report on Undertrial Review Committees. Despite judicial interventions to enforce the

periodic review of these cases, most often with a view to securing justice for undertrial prisoners, compliance is patchy within the states. New data reveals that India's prisons hold over 4.19 lakh inmates, with 67 per cent being under trial prisoners. The fact is that many of these people are still in jail because of systemic inefficiencies, like long delays for trials and the inability to provide bail. Re-Inhuman Conditions in 1382 Prisons (2013), case of the Supreme Court also stressed the setting up and working of the Undertrial Review Committees (UTRCs) in every district. Among its duties, these committees are called upon to review cases of undertrials who are eligible for release under Section 436A of the Criminal Procedure Code (CrPC). However, in "Circle of Justice" report there are glaring gaps of compliance. The report also finds that only 40 percent of districts even held quarterly UTRC meetings as mandated[19]. Furthermore, the majority of UTRCs do not act upon their recommendations, most importantly resulting in large amounts of undertrials languishing in confinement. This inefficiency shows that it is necessary to undertake a change in the way the prisons are done. This can be solved by digitizing prison administration by making processes easier, being transparent about them, and keeping on track with each process. Some states like Rajasthan and Telangana have shown how digital initiatives can work but digitisation in the country still doesn't happen everywhere. The proposed digitization framework derives, in part, from the Supreme Court's guidelines in Re-Inhuman Conditions in 1382 Prisons[20]. The principles laid down in the Article 21 (Right to Life and Personal Liberty) of the Constitution of India also call for the expeditious justice. Courts should direct errant states to follow suit, must continue the judiciary's proactive role in monitoring the implementation of UTRC mandates. In case laws such as Hussainara Khatoon v. State of Bihar (1979) The plight of the undertrial prisoners and the articulation of speedy trials have already been highlighted The digitization framework proposed here conforms to the principles laid down

in such landmark judgments so as to ensure that no individual's liberty gets eroded by systemic inertia. To ensure uniform implementation of Undertrial review committee the proposed solutions may include

Nationwide Digitization of Prison Administration Comprehensive Legislative Mandate. It should be made a detailed law by Parliament for the digitization of the entire prison administration nationwide. Understandably, the implementation of this legislation must define clear guidelines outlining timelines for completion of trials and severe penalties for non-compliance. The law would supply a framework of legality for digitization, neutralizing ambiguities and specifying a common course of action among all states. The framework would also be clear to courts, and oversight bodies to monitor and correct lapses.

Establishment of Central Oversight Body-For the administration and functioning of the digital prison the structure should be constituted under the Ministry of Home Affairs with a dedicated oversight body. This body will conduct periodic audits to ensure states adhere to the prescribed timelines and published the reports of their compliance to remain transparent. Additionally, the oversight body must set benchmarks, evaluate the state performance, identify gaps and help close the same. This would bring a centralized approach avoiding discrepancies and achieving uniformity in this manner.

Extensive Capacity Building Initiatives to be conducted - All stakeholders need to be rigorously trained in order to be effectively utilising digital tools. Prison officials working in the prisons need to be trained in the new systems in order to be acquainted with the new systems, while the judicial officers and legal aid functionaries should be trained to integrate their processes smoothly with the digitised framework. In addition, district, state and other technical support teams need to be established for continuous support. Such initiatives would give stakeholders power to make the system work at optimum level.

Financial Allocation and Accountability are adequate - Developing and maintaining the digital infrastructure is dependent on the Central Government allocating dedicated funds. States should be given funds to meet their requirements, and strict accountability to ward against improper utilization of these funds. Mandatory detailed expenditure reports should be demanded, and misuse of funds must be met by punitive actions. This financial strategy would make sure that if there is a resource constraint and the state lags, it will still be transparent and accountable[21].

Human Rights and Socio-Legal Implications

Talking about the various issues with Prison Administration in India, Digitisation of prisons is an utmost change we can adopt — one which has truly transformative potential to solve challenges plaguing prisons across the country including those associated with rights of undertrial prisoners. the finding from 2021 that India has one of the highest prison overcrowding rates in the world—over 130%, based on multiple year average from National Crime Records Bureau (NCRB) data—and replace outdated colonial-era laws governing our prisons and prison reforms seem even more urgent[22]. Such changes in prisons have human rights and socio-legal reform implications, making digital solutions even more penetrating within Indian prisons. Digitization fulfils the constitutional commitment of India to protect personal liberty, which entails a fair trial, by expediting legal aid and facilitating access to justice. Moreover, access to digital means of grievance redressal and legal aid will help uphold the values of human dignity, transparency and accountability in the justice system where prisoners are concerned. Article 21 of the Indian Constitution guarantees that No person shall be deprived of his life or personal liberty except according to a procedure established by law, upholding the right to a fair trial. This right also applies to undertrial prisoner who usually is kept in jail without any trial for more time than normal people. There are several judgments pronounced by Supreme Court of

India reiterating that delay in justice is a violation of this fundamental right. In Hussainara Khatoon v. State of Bihar (1979), the Court held that preventive detention for long was unconstitutional, and necessitated immediate changes in the criminal justice system.

Inefficient prison systems amplify distrust in the justice system, perpetuating social inequalities and eroding the rule of law. Digitization offers a transformative solution by enabling efficient management of prisoner data, real-time case tracking, and automated grievance redressal systems. Such reforms could align India with international standards, as exemplified by countries like Belgium, where initiatives like the "Prison Cloud" facilitate seamless data exchange between courts and prison administrations. The integration of digital systems could bridge the communication gap between judicial and prison authorities, ensuring timely dissemination of bail orders and case updates. Projects such as India's E-Prisons initiative and digital platforms for grievance redressal are steps in the right direction but require comprehensive implementation to achieve tangible results[23]. The deployment of AI-powered monitoring tools and telemedicine could further enhance prisoner welfare, addressing issues of healthcare access and prison security. Ultimately, the socio-legal implications of digitizing prison administration extend beyond operational efficiency. They touch upon the broader objective of ensuring justice, equality, and the protection of human dignity. A coordinated approach involving policymakers, judiciary and technology experts is essential to transform India's prisons into systems that uphold the constitutional promises of justice and liberty for all individuals, including those awaiting trial[24].

Conclusion

In India, the digitisation of prison administration represents first-time transformational opportunity to a systemic corrective that our justice system requires and has long continued to reflect in its deep-rooted injustices meted out especially against undertrials. What India needs is real-time

case tracking, legal aid portals, video conferencing and grievance mechanisms in prisons; such reforms have the potential to make Indian prisons more efficient and far less opaque, as well as much more humane. Achieving this vision will require cooperation between the judicial authorities, prison administrations and digital technology experts. By adopting these reforms, Indian prison administration will be well on its way towards international good practices while protecting human rights and making justice work for undertrial prisoners.

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Understanding the Homecoming: 'Form Flipping' to 'Reverse Flipping:

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Abstract

In the last couple of years, numerous Indian companies have relocated their ownership structures abroad because of different strategic reasons. These are overseas listings, exposure to international capital markets, greater intellectual property (IP) safeguards, the possibility of attracting manpower in foreign countries, and tax advantages from foreign locations. Externally, though, things have not been smooth sailing. Companies have faced increasing operating expenses and the threat of their foreign operations being considered as controlled and managed out of India, resulting in large tax implications. The intricacies of externalized structures have further caused tax controversies, particularly with the implementation of multilateral arrangements and amendments to double taxation treaties.

To overcome these challenges, the government of India has initiated various measures to persuade companies to have their ownership patterns revert back to India. These initiatives involve tax incentives in GIFT City and plans to make the tax environment investor-friendly, like exempting specific non-resident investors and start-ups from angel tax.[1]

Keywords: Reverse Flip, Intellectual property protections, Inbound Merger, Share swap, Tax Implications, FEMA.

Statement of Research Problem

The trend of Indian companies outsourcing their ownership patterns has been on the rise in recent years on

account of several strategic reasons like opportunities for overseas listing, access to global capital markets, greater intellectual property protection, and tax advantages.[2] These benefits, however, entail enormity of challenges like higher operating costs, regulatory oversight, and complicated tax implications. With the changing world capital market landscape and proactive efforts of the Indian government, there is increasingly a trend for companies to switch to 'reverse flipping'—taking their ownership structures back to India. This paper attempts to find out the legal, regulatory, and economic implications of this trend and understand the challenges companies encounter in taking their reverse flipping path.

Research Objective

The major objectives of this research paper are to examine the increasing trend of reverse flipping among Indian companies and the reasons behind it. In particular, the research focuses on:

1) Investigating the economic, tax, and regulatory considerations driving companies to reverse flip their ownership structures to India.
2) Analyse the advantages and disadvantages of reverse flipping, such as tax breaks, simplicity in conducting business, and compliance obstacles.
3) Evaluate the efficiency of Indian government policies in aiding this transition.
4) Compare various structural reverse flipping approaches, including inbound mergers and share swaps, against the backdrop of legal and financial implications.

Research Methodology

The research in the Paper is founded on a Doctrinal Study of the secondary sources which vary from Journal Articles, Books and myriads of cases which have evolved the Law of Prior Publication in India. The type of study pertains to the appreciation of the way in which the Law on Prior Publication has to be appreciated while deciding the

registrability of the patent in India. Additionally, the Paper makes use of a Descriptive Research, in which the current meanings and the Design litigations' regime are perceived and evaluated critically, to provide plausible and scientifically shrewd remedies.

Introduction

During the period of rapid economic transformation, global capital markets have become less attractive, enhancing the trend of listing in India further. Complexity in the regulatory environment and tax-related issues associated with externalization have also been the drivers of this wave.

Industrial observers highlight that the Indian market's ability to provide high valuations and enhanced ease of doing business are the key drivers behind this phenomenon. While destinations like the USA and Singapore are favourable in the dimension of business operations scale-up, the Indian market is considered a more desirable platform for growth over the long term.

This research paper attempts to analyse the causes of this "reverse flip" phenomenon, look at the tax and regulatory implications, and check whether India's evolving legal scenario is effectively facilitating the return of companies.

The Reasons Behind the Rise in 'Return to Home'

The Economic Survey 2022-23 points towards a positive backdrop for the growing trend of internalization among Indian businesses, with a string of government policies, reforms, and schemes in favour of start-ups. This enabling environment, coupled with expansion of access to capital in the form of venture capital and private equity, the Indian markets maturing, and recent regulatory reforms on round-tripping, has provided strong inducements to firms to return their businesses to India. Important government initiatives, including "The National Initiative for Developing and Harnessing Innovations **("NIDHI")**", "The Fund of Funds for Start-ups **("FFS")**" and "The Atal Innovation Mission **("AIM")**", play a crucial role in encouraging indigenous product development and early-stage

financing support to start-ups. In particular, through NIDHI, the government has been able to fund over 12,000 start-ups and create over 130,000 jobs. These reforms have not only streamlined the ease of conducting business in India but also strengthened foreign institutional investors' confidence in the economic opportunities of the nation. The single most influential reason behind this move is the change in thinking on the part of founders and management teams, who increasingly realize the potential of Indian Market to generate value. This encompasses greater investment interest, more robust brand relationships, and expanding customer bases, all of which increase the attractiveness of an exit in the near term via an initial public offering **("IPO")**. One such company is Zepto, which is eyeing to get the benefit of Indian Stock Market's bullish phase and widening investor base.[3]

Companies are being forced to re-visit and re-strategize their business models in order to emphasize organic growth and customer-centricity. For companies, whose central value is based in India, bringing operations back to the nation can provide huge benefits, such as operational efficiency and favourable market perception.[4] Internalization also eliminates administrative and managerial complications by limiting operations to a single jurisdiction.

Procedure and Compliances: Structuring the Flip

One of the most important aspects of the process of internalization is the determination of an appropriate structure that fits with the regulatory, legal and tax regimes in the target jurisdictions. The two methods primarily used are:

1) **Inbound Merger:** Where a foreign company merges into an Indian company. In such a structure, the foreign company's operations and assets are ultimately under the control of the Indian company, and the foreign company's shareholders are given shares in the Indian company as consideration. This is generally regarded as the easiest way of internalization. Groww adopted this specific method. In such transactions, shareholders are eligible to

claim exemption of capital gain tax if the transaction is eligible as 'amalgamation'.[5]

2) **Share Swap:** A share swap arrangement can be utilized, wherein the shareholders of the foreign company exchange shares in the foreign company for shares in the Indian company. This method provides a second good alternative for internalization, which can serve specific strategic or financial goals. PhonePe utilized this route for their reverse flipping.[6] In reverse flipping via share exchanges, capital gains tax is charged on the variance between the worth of the Indian entity's shares at the moment of the reverse flip and the cost of purchase of the shares of the foreign entity. Nonetheless, the assessment of acquisition costs and the worth of the Indian entity are normally areas of conflict between companies and tax authorities. The Vodafone case[7] serves as a crucial example of the significant legal and financial risks businesses face while navigating India's tax regime, especially in the context of cross-border transactions.[8]

Regulatory Compliance

The entire process of 'reverse flip' involves the regulatory compliance with Indian Laws. Tax and regulatory aspects of 'reverse flipping' through proper inbound merger and share swap has been elaborated as under:

1) **Inbound Merger:**

In order to start an inbound merger, it is essential that an RBI approval and a valuation report from a registered valuer that must be in harmony with internationally accepted principles of valuation are obtained. Then the relevant company will have to approach the National Company Law Tribunal with an application for approval. This approval is conditional upon satisfaction of creditors and members of the relevant company and intervention on part of statutory bodies.

Also, one needs to ensure adherence to provisions under the applicable rules under The Foreign Exchange Management (Cross Border Merger) Regulations, 2018 ('Merger

Regulations') and Foreign Exchange Management (Non-debt Instruments) Rules, 2019. When the Indian entity, assumes the outstanding guarantees and borrowings of foreign merged company from overseas sources, such liabilities must comply with the External Commercial Borrowing (ECB) norms and the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018, within two years of the transfer, excluding end-use restrictions.[9]

2) Share Swap:

In case of a Share swap, the Indian company needs to adhere to the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, The Foreign Exchange Management (Overseas Investment) Rules, 2022, Income Tax Act and rules and regulation framed therein, among many other considerations such as DPIIT's Press Note 3.

The Tax Implications

When the reverse flip is done via an inbound merger, the foreign amalgamating shareholders may be entitled to claim exemption from capital gains tax, subject to the prescribed conditions for the transaction to be treated as an 'amalgamation' in terms of the Indian Income Tax Act, 1961 **("IT Act")**. This proviso is important, since the IT Act defines "transfer" quite comprehensively to encompass not merely the sale but also the extinguishment or abandonment of capital assets, indicating the intricacy of navigating India's tax system. Where a cross-border merger does not satisfy the exemption criteria of the IT Act, cancellation of the foreign company's shares constitutes a taxable event, potentially causing a major jump in the tax liability of the foreign company. This exposure to tax poses the question as to whether the advantages of internalization are indeed higher than the cost for investors.

In addition, a reverse flip arranged through a share swap also has its own challenges. Foreign shareholders will be taxed in India on the variation between the value of shares in the Indian entity at the time of the flip and the initial cost of their foreign shares. This tax burden, as in the case of **PhonePe**

where capital gains were in the range of almost INR 8,000 crores, illustrates the significant cost burden that the shareholders can have. Therefore, the investors are likely to insist on strong exit clauses, like an early IPO, to get their money back, putting the pressure on near-term performance of the Indian entity even more. This emphasis on short-term exit possibilities might, in turn, weaken the company to think long term, which might impact its future growth path and market positioning.

Another complicating factor brought in by the IT Act's indirect transfer taxation provisions is added. The profit from the share transfer of shares in a foreign company is made taxable in India if the consideration for such shares is significantly connected with Indian assets. Even on share swaps, this provision covers them, putting additional tax risk for foreign investors, which can discourage some from funding the reverse flip mechanism. These regulatory complexities bring to the forefront the issue of whether India's existing taxation system is properly geared to deal with the increasing phenomenon of reverse flipping without unfairly burdening foreign investors. From a wider viewpoint, the tax issues involving foreign shareholders reflect a broader concern regarding India's taxation regime. Although India has done well to enter into Double Taxation Avoidance Agreements **("DTAAs")** with many nations, such treaties do not necessarily safeguard foreign investors from the full force of India's tax regime.[10] An example of the limitation of DTAAs to ensure long-term tax certainty can be seen with the termination of preferential treatment of capital gains tax for Singaporean investors in Indian entities on and after April 1, 2017. Such unpredictability can erode investor confidence, making India a less attractive jurisdiction for reverse flips.[11]

Last but not least is the problem of built-up losses, which could be rendered unavailable after the flip if shareholding levels are crossed. This can erode the financial stability of the Indian entity when it least it needs is to deal with the nuances

of internalization and preserve investor confidence. Overall, the regulatory and tax challenges associated with reverse flipping not only make the decision-making process for investors and companies more complicated but also require more predictable and streamlined tax reforms to align India's policy environment with its vision of becoming a global start-up destination.

Other Key Sectorial Consinderations

Besides following DPIIT's Press Note 3, additional regulatory and industry approvals can be required based on the business of the entity. For instance, if the entity is internalized in an industry that calls for prior approval under the Consolidated Foreign Direct Investment **("FDI")** Policy of India, approvals from the Reserve Bank of India **("RBI")** or the Government of India can be required. In addition, the character of the business and the licenses that the parties have may necessitate further approvals. For example, the RBI seeks prior approval for any "change in control" of non-banking financial companies and housing finance companies. As the reverse flip deals with unwinding the foreign entity and merging its shareholders into the Indian entity, it causes a change in control, ownership, shareholding, and possibly management, for which all approvals pertaining thereto are required. Payment aggregators also have to notify the RBI of any change in control or management, and the RBI can place restrictions subject to review.

It is equally significant to examine if permission is to be required from the Competition Commission of India **("CCI")** for the transaction. This will entail establishing whether the internalization leads to the acquisition of control and checking the deal size, asset size, and turnover of the concerned entities. Depending on the final structure, a notification under the Competition Act, 2002, may be required to be submitted to the CCI by both the entities and the foreign investors.[12]

Hence, a proper analysis of all regulatory and sectorial clearances that are needed in India, and in the host country of

the foreign entity, is crucial to properly plan the internalization process and handle related timelines.

Hurdles and the Recent Amendment

The challenges that a company encounters while reverse flipping are the regulatory ones. As elaborated earlier, a firm must adhere to a myriad of rules and regulations in order to facilitate proper internalization. One of the major challenges is the complexity of tax regulations in India, especially with regard to repatriation of assets and the possibility of dual taxation. Firms relocating to India have to go through complex procedures pertaining to capital gains, transfer pricing, and adherence to the Goods and Services Tax **(GST)**. Additionally, although the government has rolled out tax concessions, including in GIFT City, more needs to be done on reforms to mitigate issues of corporate governance, regulatory permissions, and cross-border merger rules.

Adding to this are the commercial intricacies surrounding shareholder agreements and stock options. Reverse flipping may require modifying shareholder agreements and reissuing stock options to employees, which can result in employee dissatisfaction. The revocation of foreign stock options and substituting them with new ones that are compliant with Indian law may cause disenfranchisement, especially if the Indian stock options are viewed as less desirable. This threatens employee retention, particularly in a start-up environment where talent is the success driver. Organizations thus need to manage these changes strategically in order not to lose their workforce and ensure stability in manpower. Compliance with all these different laws and regulations can be very time-consuming. That is why the government has now brought in an amendment in Companies (Compromises, Arrangements and Amalgamations) Rules, 2016[13] to make the homecoming of IPO-bound start-ups more time-saving. The amendment does away with the need to obtain NCLT approval, which would cut down the time for the entire process by over half.

Conclusion

The Indian corporates' move towards reverse flipping is motivated by economic, tax, and regulatory considerations. Although externalization initially brought greater access to the global capital markets, stronger intellectual property protections, and tax advantages, the changing business landscape has brought it considerable compliance and operating challenges. Greater regulatory oversight, the threat of being treated as managed and controlled out of India, and the tax-related consequences of cross-border operations have prompted many companies to reassess their offshore arrangements.

The Indian government has countered with tax benefits in GIFT City, angel tax exemptions, and ease of compliance to attract the companies back.[14] These reforms will enhance ease of doing business while making India a suitable destination for high-growth companies. Nonetheless, even with these benefits, companies have to deal with complex regulatory clearances, industry-based compliance hassles, and attached tax liabilities, which could serve as disincentives for their complete adoption of the reverse flipping trend.

Among structural reverse flipping modes, inbound mergers and share swaps have developed as the two main mechanisms. Inbound mergers, as implemented by Groww, provide tax-effective restructuring options, while share swaps, as in the case of PhonePe's reverse flip, are an alternative mechanism but with a capital gains tax burden. Such structural options should be carefully analysed, taking both legal and economic risks involved with cross-border deals into account.

In the future, the success of India's reverse flip-friendly policies will lie in how well they are able to strike a balance between regulatory control and business agility. A more stable tax regime, better guidelines for cross-border mergers, and stronger investor protection mechanisms will be essential in perpetuating this trend. If effectively implemented, these can further solidify India's position as a global start-up hub, turning

it into a destination of choice for businesses that want to consolidate their operations at home.[15]

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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:

i. 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.

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

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Consumer Rights in the Digital Era: A Critical Analysis of the Consumer Protection Act, 2019

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Abstract

This study explores Consumer rights in the digital era by employing doctrinal research methodology to analyse key factors. The research aims to critically analyze the Consumer Protection Act, 2019, with a focus on its applicability in the digital era. It also focuses on how effective the Act is in addressing grievances and protecting consumers in the digital economy. The findings reveal main discoveries, highlighting the significance of key implications in the field of consumer protection. The Act's provisions, while progressive, often fail to account for the borderless nature of digital transactions, leading to jurisdictional ambiguities. Additionally, the lack of a cohesive data protection framework leaves consumers exposed to risks such as identity theft, unauthorized data sharing, and targeted advertising without consent., which contribute to theoretical advancement, practical application, or policy-making. Furthermore, the results suggest broader impact or recommendations, emphasizing the necessity for proposed changes or future considerations. This research bridges the gap in the current legal framework, examining the extent to which the Consumer Protection Act, 2019, meets the needs of consumers in the digital age by providing novel insights or improvements, making it a valuable resource for academics, practitioners, policymakers.

Keywords: *Consumer Protection Act 2019, Consumer Rights, Consumer Protection (E-Commerce) Rules 2020, Digital Economy, E-commerce, Data Privacy*

Introduction

Consumer protection is an essential component of a just and equitable society, ensuring that individuals are shielded from exploitation, fraud, and unfair trade practices. It is the cornerstone of a functioning market economy, where consumers are treated with dignity, their rights are respected, and their interests are safeguarded. In a rapidly evolving world, where products and services are increasingly diverse and markets are expanding both locally and globally, consumer protection has become more crucial than ever. The significance of consumer protection can be understood not only through legal frameworks but also from economic, social, ethical, and political perspectives. It plays a vital role in maintaining trust in markets, fostering fair competition, and promoting social justice. This passage explores the multifaceted importance of consumer protection and its pivotal role in shaping modern economies and societies. At the heart of any thriving market economy lies the confidence of its consumers. The relationship between consumers and businesses is built on trust, with consumers relying on businesses to provide products and services that meet certain standards of quality, safety, and reliability. When consumers are adequately protected, they feel more secure in their purchasing decisions, leading to increased participation in the market. Conversely, when consumers are subjected to exploitation or unfair practices, their trust in the market erodes, and this can result in reduced consumer spending, economic stagnation, and a general lack of faith in market institutions.[1]

Consumer protection fosters economic stability by ensuring that consumers are treated fairly, preventing the occurrence of deceptive and fraudulent practices. By holding businesses accountable for their products and services, consumer protection laws help maintain a level playing field in

the market. When consumers are assured that they are receiving quality goods and services, they are more likely to invest in and support various industries, creating a cycle of economic growth. Furthermore, businesses that adhere to ethical practices and provide transparent information are more likely to attract loyal customers, which leads to long-term profitability. Consumer protection, therefore, contributes directly to the overall health of the economy by promoting sustainable growth and fostering a climate of consumer trust. Consumer protection plays an important role in empowering consumers. In an ideal marketplace, all consumers should have access to products and services that are safe, reliable, and priced fairly. However, this ideal is often threatened by asymmetries in information, where consumers may not always be aware of the full scope of their rights, or the quality of products and services they are purchasing. Without adequate consumer protection, consumers are often at the mercy of businesses that may use deceptive marketing tactics, sell substandard products, or engage in exploitative practices. Furthermore, consumer protection laws provide consumers with the means to seek redress for grievances, whether it is through compensation for faulty goods or services or the right to return or exchange products. The establishment of consumer courts and forums enables consumers to resolve disputes in a relatively simple and accessible manner, ensuring that they are not left without recourse when their rights are violated. This fosters a sense of security and confidence in the marketplace, which encourages consumers to participate actively in the economy.[2]

Consumer Protection in Ancient Indian Era

In ancient India, consumer protection was not governed by formalized legal codes in the way that modern legal systems operate, but it was rooted in moral and ethical principles deeply embedded in the social fabric of the time. The protection of consumers was primarily handled through the adherence to moral guidelines, regulations and community

norms, many of which were detailed in religious and philosophical texts like the *Manusmriti*, *Arthashastra*, and various *Dharma Shastras*. These texts not only laid out the duties of kings and merchants but also emphasized fairness, honesty and integrity in trade.[3]

The *Arthashastra*, attributed to Kautilya (Chanakya), is often regarded as one of the earliest works that discussed economic principles in detail. While the *Arthashastra* was primarily a treatise on governance, statecraft, and economics, it also laid significant emphasis on the regulation of markets and the protection of consumers. Kautilya recognized the importance of fair and just trade as essential for the prosperity of society. He believed that markets should not be places where consumers were left vulnerable to exploitation. He recommended that the state take an active role in regulating trade practices, ensuring that merchants adhered to ethical business standards. Kautilya's work includes provisions that would today be recognized as forms of consumer protection—suggesting that the state should control the price of essential commodities to prevent price gouging and ensure that goods sold in the marketplace were of the highest quality. He proposed that merchants should be held accountable for selling fraudulent or adulterated goods and that the state should intervene when such acts occurred, ensuring that the harm done to consumers was addressed.[4]

Consumer protection in Medieval India

Consumer protection in medieval India, particularly under the Mughal Empire, underwent significant transformation. The Mughal period, which spanned from the early 16th century to the mid-19th century, witnessed a profound expansion of markets, urbanization, and the establishment of structured administrative systems. This period marked a turning point in economic practices, where the regulation of trade, market practices, and consumer rights became more sophisticated. The Mughals implemented various mechanisms that sought to protect consumers from

exploitation while also ensuring the smooth functioning of the economy. These mechanisms were deeply embedded within the political and economic structure of the empire, which balanced trade, commerce, and governance in a manner that impacted both merchants and consumers.

The Mughal Empire, especially under the reign of Emperor Akbar (r. 1556–1605), who is considered one of the most enlightened rulers in Indian history, provided the most visible model of centralized administration that influenced the regulation of markets and consumer welfare. One of the defining features of Mughal rule was the consolidation of state power, and with this centralization came the ability to implement far-reaching economic reforms that affected every aspect of trade and commerce, including the protection of consumers.[5]

Consumer Protection and Pre-Independence era

The pre-independence era of India, particularly during British colonial rule, stands as a critical phase in the development of consumer protection and market regulation in the country. From the mid-18th century when the British East India Company began to take control of significant portions of Indian territory, until India gained independence in 1947, the market landscape of India underwent dramatic changes. This period was defined by exploitation, colonial economic policies that heavily favored British interests, and the gradual realization of the need for some form of consumer protection, which was to be formalized much later. While consumer protection in its modern sense did not exist during British rule, the foundations for future legislation and reforms were set during this time.[6]

Consumer Protection and Post Independence

The post-independence era in India marked a significant shift in the country's approach to governance, economic development, and social welfare. While the immediate aftermath of independence focused on rebuilding a newly liberated nation, a gradual yet systematic evolution of

consumer protection laws began to take shape as India navigated its complex path toward modernization and equitable growth. As India embarked on its journey to establish a democratic, socialist economy, the welfare of its citizens, including consumers, became a priority for the government. Over the decades, post-independence India saw the formulation and implementation of laws and policies that would gradually enhance consumer rights, empower consumers, and create a legal framework for their protection.[7]

Critical Analysis of the Consumer Protection Act, 2019

The **Consumer Protection Act, 2019** marks a significant milestone in India's legislative history, replacing the nearly three-decade-old Consumer Protection Act of 1986. This legislation is a response to the dynamic transformations in consumer behavior and market operations in an increasingly digitalized economy. While the 1986 Act served its purpose in a traditional marketplace dominated by face-to-face transactions, the rise of e-commerce, digital platforms, and cross-border trade demanded a reimagined legal framework to address the challenges posed by a rapidly evolving consumer landscape. The 2019 Act seeks to provide a holistic approach to consumer rights, ensuring fair practices in traditional and digital marketplaces alike while addressing the complexities that modern transactions entail.

At the heart of the Act lies the intention to protect consumer rights in the digital era, wherein the sheer scale and anonymity of transactions pose unprecedented risks. The Act incorporates specific provisions aimed at regulating e-commerce and addressing grievances arising from online trade. It mandates **disclosure of seller information**, requiring platforms to reveal the identity and details of sellers, thereby enhancing transparency and accountability. This ensures that consumers are not left grappling with unknown entities in the event of disputes, especially given the high volume of third-party vendors operating on digital platforms. The Act also emphasizes **product authenticity**, requiring sellers to ensure

that the products they offer are genuine and meet the quality and safety standards promised during the sale. Such provisions are critical in curbing the menace of counterfeit goods, which not only undermine consumer trust but also harm legitimate businesses.

The Act also tackles the widespread issue of **misleading advertisements** and **unfair trade practices**, which have been magnified in the digital age. With the increasing influence of digital marketing, consumers are often bombarded with advertisements that make exaggerated or false claims about products and services. To counter this, the Act imposes stringent penalties on advertisers and businesses found guilty of engaging in deceptive practices. The **Central Consumer Protection Authority (CCPA)**, established under the Act, plays a pivotal role in monitoring and enforcing compliance with these provisions. Empowered to investigate complaints, conduct inquiries, and initiate legal proceedings, the CCPA is designed to act as a watchdog in safeguarding consumer interests.[8]

While the Consumer Protection Act, 2019, introduces a robust framework to address contemporary challenges, its implementation is not without limitations. One critical gap is the **absence of a comprehensive data privacy framework**. As consumers increasingly transact online, their personal data becomes vulnerable to unauthorized access, misuse, and breaches. The Act, while addressing transactional transparency and seller accountability, does not adequately safeguard consumer data—a glaring omission in an era where data is often termed the "new oil." The lack of clear provisions on data privacy and cybersecurity leaves consumers exposed to risks, undermining their confidence in the digital ecosystem.

Moreover, the issue of **jurisdictional ambiguities in cross-border transactions** remains unresolved. As international digital trade continues to expand, the Act struggles to provide a clear mechanism for addressing disputes involving consumers and sellers across different jurisdictions.

Questions of applicable law, enforcement of judgments and resolution of disputes often leave consumers in a legal gray area, with limited recourse against foreign entities. This is further complicated by the differing regulatory standards and practices across countries, creating barriers to effective dispute resolution.

Provisions Addressing Digital Consumer Rights

- ***Legal Identity of Sellers***

The Consumer Protection Act, 2019 mandates e-commerce platforms to disclose the legal identity of sellers, including their registered name, business address, and contact details. This transparency ensures that consumers know the entity they are dealing with and provides a direct point of contact in case of grievances. By requiring sellers to provide accurate and verifiable information, the legislation deters fraudulent entities from exploiting the anonymity often associated with online platforms. For instance, platforms like Amazon and Flipkart now prominently display seller details on product pages, making it easier for consumers to evaluate the credibility of the seller before making a purchase. However, the sheer volume of sellers on these platforms often results in lapses, with some sellers providing incomplete or misleading information, which diminishes consumer trust.

- ***Product Authenticity***

Ensuring product authenticity is a critical aspect of seller transparency under the 2019 Act. Platforms are required to provide detailed information about the origin, specifications, and certifications of the products listed. This provision is aimed at addressing the widespread issue of counterfeit goods, which not only harm consumers but also legitimate businesses. By making product details mandatory, the Act ensures that consumers have access to accurate information about what they are purchasing, reducing the risks of deception. However, enforcement challenges persist, as counterfeit products continue to surface on even the most prominent platforms, raising questions about the effectiveness of these measures.

The responsibility placed on platforms to verify the authenticity of products sold through third-party vendors remains a contentious issue, with platforms often claiming they are merely intermediaries and not liable for fraudulent listings.[9]

- ***Return, Refund, and Exchange Policies***

The Act also requires clear and transparent disclosure of return, refund, and exchange policies by e-commerce platforms. These policies must be prominently displayed and include the terms and conditions applicable to returns and refunds. This provision empowers consumers to make informed decisions, especially for high-value purchases where return policies are critical. The lack of clarity or deliberately hidden terms has historically led to consumer grievances, which the 2019 Act aims to eliminate. Platforms are now required to ensure that these policies are not only available but also easy to understand, enabling consumers to exercise their rights effectively. Despite these advancements, inconsistencies in the implementation of return policies and delays in refunds remain common complaints, undermining consumer confidence in digital transactions.[10]

- ***Impact on Consumer Trust and Product Authenticity***

Mandatory disclosure provisions play a pivotal role in fostering consumer trust in e-commerce platforms. By ensuring transparency, these measures address key concerns such as fraud, counterfeit products, and unclear policies. Consumers are more likely to trust platforms that provide complete and accurate seller information, as this reduces the risk of scams and increases accountability. For example, in 2021, Amazon and Flipkart faced several complaints for failing to disclose adequate seller details, prompting regulatory action. These cases highlighted the importance of robust disclosure practices in maintaining consumer trust. However, the effectiveness of these provisions is often hindered by inconsistent enforcement and the lack of stringent penalties for non-compliance.

Judicial interventions have played a significant role in shaping the implementation of seller transparency provisions. In the **All India Online Vendors Association v Flipkart & Others (2020)** case, the court emphasized the need for platforms to verify and disclose complete seller information to ensure compliance with consumer protection laws. The judgment highlighted the responsibility of platforms to act beyond the role of intermediaries and actively participate in protecting consumer interests. Such rulings reinforce the need for stringent enforcement of disclosure provisions and set precedents for holding platforms accountable for lapses in transparency.

Product Authenticity: Addressing Counterfeit Goods in the Digital Age

Counterfeit goods have become a pervasive issue in the era of e-commerce, affecting consumers, legitimate businesses, and the economy as a whole. These goods undermine consumer trust, compromise safety, and lead to significant revenue losses for genuine manufacturers. The **Consumer Protection Act, 2019**, in conjunction with the **Consumer Protection (E-Commerce) Rules, 2020**, takes several measures to address this menace. The legislation introduces stringent requirements for ensuring product authenticity, holding both sellers and platforms accountable for any fraudulent practices. This section elaborates on the Act's provisions, implementation mechanisms, and judicial precedents, highlighting their impact on tackling counterfeit products in the e-commerce ecosystem.[11]

Measures to Protect Consumers from Counterfeit Products

The Consumer Protection Act, 2019, recognizes the severity of counterfeit goods and establishes specific provisions to ensure authenticity and protect consumer interests. These measures aim to create a transparent and accountable marketplace where consumers can make informed purchasing decisions without fear of being deceived.

1. ***Due Diligence by Platforms***

E-commerce platforms are mandated to conduct due diligence to verify the authenticity of sellers and their products. This requirement ensures that platforms are not merely intermediaries but active participants in maintaining the integrity of the marketplace. Platforms are expected to:

- Vet the credentials of sellers during the onboarding process.
- Periodically review the listings to identify and remove counterfeit goods.
- Implement mechanisms to trace the origin of products to their manufacturers.

By holding platforms accountable for the products sold on their sites, the Act discourages the listing of counterfeit goods and ensures greater scrutiny in the marketplace.

2. ***Mandatory Disclosure of Product Details***

The Act requires the mandatory disclosure of key product details to help consumers verify the authenticity of their purchases. Sellers must provide:

- **Manufacturing details**, including the name and address of the manufacturer.
- **Batch numbers** and expiry dates, particularly for perishable and pharmaceutical products.
- **Certificates of authenticity** or compliance, especially for high-value items like electronics, luxury goods, and jewelry.

This level of transparency empowers consumers to assess the quality and legitimacy of products, reducing the likelihood of counterfeit goods entering the supply chain.

3. ***Liability for Selling Counterfeit Goods***

Under **Section 2(47)**[12], selling counterfeit goods is categorized as an "unfair trade practice." Both sellers and platforms can be held liable for such violations. This provision ensures that accountability is not limited to the seller but extends to the platform facilitating the transaction. Penalties for selling counterfeit goods include fines, imprisonment, and

orders to compensate affected consumers, providing a strong deterrent against fraudulent practices.

4. Implementation Mechanisms

The effective implementation of the provisions under the Consumer Protection Act, 2019, requires robust mechanisms to detect and prevent the sale of counterfeit goods. The following are key measures adopted by platforms and regulatory authorities to ensure compliance.[13]

5. Third-Party Verification

E-commerce platforms are encouraged to engage third-party agencies to verify the authenticity of products and sellers. These agencies conduct audits and inspections to identify counterfeit goods and ensure that only genuine products are listed for sale. For example, platforms like Amazon and Flipkart have implemented quality assurance programs that involve independent agencies verifying product credentials before listing them on their websites. This process not only safeguards consumers but also enhances the credibility of the platform.

6. Technology-Driven Solutions

Technological advancements play a crucial role in combating counterfeit goods. Many platforms have adopted tools like blockchain to create tamper-proof records of product origin and supply chain movements. Other measures include:[14]

- **Digital watermarking** and unique identifiers for products to distinguish genuine items from counterfeits.
- **AI-powered algorithms** to detect fraudulent listings based on patterns of consumer complaints and seller behavior.
- **QR codes** and online portals where consumers can verify product authenticity by scanning or entering unique product codes.

These solutions provide an additional layer of protection, ensuring that consumers receive what they pay for.

7. Consumer Redressal Mechanisms

If counterfeit goods are delivered, consumers can file complaints under **Section 69** of the Act to seek replacement, refund, or compensation. The redressal process is designed to be efficient and consumer-friendly, with the following features:

- Consumers can approach the **Grievance Officer** appointed by the e-commerce platform to resolve the issue.
- In cases of unresolved grievances, complaints can be escalated to the **Central Consumer Protection Authority (CCPA)** or consumer courts.
- The Act ensures that consumers do not bear the burden of proving fraud; instead, platforms and sellers are required to substantiate their claims regarding product authenticity.

These mechanisms provide consumers with a clear and accessible pathway to seek justice in cases of fraud, reinforcing their trust in the system.

Case Laws

Judicial precedents have played a significant role in shaping the enforcement of product authenticity provisions under the Consumer Protection Act, 2019. The following landmark cases illustrate the challenges and outcomes associated with counterfeit goods in the e-commerce sector.

- ***Snapdeal Case (2019)[15]***

In 2019, Snapdeal faced regulatory action after counterfeit luxury goods were discovered on its platform. Consumers reported receiving fake versions of branded watches, handbags, and accessories, leading to widespread dissatisfaction and negative publicity. The case brought to light the platform's failure to verify seller credentials and implement adequate quality checks. The court ruled that e-commerce platforms cannot absolve themselves of responsibility by claiming to be intermediaries. Instead, they are required to actively monitor and remove counterfeit listings. This judgment reinforced the accountability of platforms and

highlighted the need for stricter enforcement of anti-counterfeit measures.[16]

- ***Rolex SA vs Alex Jewellery Pvt Ltd (2014)***[17]

Though this case predates the Consumer Protection Act, 2019, it remains a landmark judgment in addressing counterfeit goods. Rolex filed a lawsuit against Alex Jewellery for manufacturing and selling counterfeit Rolex watches. The court ruled in favor of Rolex, ordering the defendants to cease all production and sale of counterfeit goods and pay damages to the brand. The case set a precedent for holding sellers liable for counterfeit products and emphasized the importance of protecting intellectual property rights. It also underscored the need for stronger legal frameworks like the 2019 Act to address the growing menace of counterfeits in the digital era.

Global Context and Comparative Analysis

Consumer protection in India has made significant strides with the enactment of the Consumer Protection Act, 2019, which replaced the earlier 1986 legislation. This revamped framework reflects the evolving nature of commerce, including the rise of e-commerce platforms, digital transactions, and modern marketing techniques. It emphasizes transparency, accountability, and fairness, aiming to protect consumers from exploitation in an increasingly complex marketplace. However, India's consumer protection laws do not operate in isolation. In an interconnected world, where cross-border transactions and multinational corporations are commonplace, the effectiveness of any nation's consumer protection framework depends on how well it aligns with global standards.

The GDPR, for instance, is widely regarded as the gold standard in data privacy regulations, with its robust emphasis on consumer rights and corporate accountability.[18] Its principles, such as the right to access, rectify, and erase personal data, empower consumers and encourage businesses to prioritize data protection. Similarly, the FTC is known for its vigilant oversight of market practices in the United States,

addressing issues like deceptive advertising, fraudulent schemes, and anti-competitive practices with a proactive and technologically advanced approach.

General Data Protection Regulation (GDPR), European Union

The General Data Protection Regulation (GDPR) of the European Union, implemented in May 2018, is widely regarded as one of the most comprehensive frameworks for data privacy and consumer protection in the world. Designed to address the challenges posed by the digital age, the GDPR fundamentally reshaped the way personal data is collected, processed, and stored, both within the EU and globally. Its scope, stringent requirements, and heavy penalties for non-compliance have set a new standard for data protection, influencing legislation across the world, including in India.[19]

The GDPR recognizes that in the modern economy, personal data is a valuable asset. From online shopping to social media platforms, consumers generate vast amounts of data daily, and businesses rely on this information to tailor their services and improve profitability. However, this reliance on data also exposes consumers to risks, including misuse, unauthorized access, and loss of control over their personal information. The GDPR seeks to mitigate these risks by giving consumers greater control over their data and imposing stringent obligations on businesses.

The GDPR is not merely a regulation for data protection but a fundamental reimagining of the relationship between businesses, consumers, and data. It establishes a rights-based framework, where consumers are empowered to manage their personal information while businesses are mandated to ensure compliance with rigorous standards.[20]

- ***Universal Applicability****:* The GDPR applies to all entities, whether located within the EU or outside, that process the personal data of EU residents. This extraterritorial reach ensures that global corporations operating in the EU

market are held accountable for their data practices, regardless of their physical location.

- ***Accountability and Compliance****:* Companies are required to demonstrate compliance with the GDPR. This includes maintaining detailed records of data processing activities, conducting regular audits, and appointing Data Protection Officers (DPOs) where necessary. Non-compliance is met with significant penalties.

Emerging Challenges in Consumer Protection

The rapid pace of technological advancements and globalization has brought about transformative changes in consumer markets, necessitating dynamic and adaptive regulatory frameworks. While the **Consumer Protection Act, 2019**, provides a robust foundation, new challenges such as algorithm-driven practices, cybersecurity threats, and cross-border trade disputes demand innovative solutions. This chapter examines these issues, highlights international frameworks like the **United Nations Guidelines for Consumer Protection (UNGCP)**, and integrates significant judicial precedents for context.[21]

Algorithm-Driven Practices and Ethical Concerns

The advent of artificial intelligence (AI) has dramatically transformed the consumer market, offering unprecedented possibilities for personalization, efficiency, and predictive decision-making. Businesses now leverage AI-driven algorithms to optimize pricing strategies, tailor marketing campaigns, and forecast consumer behavior with remarkable precision. However, while these technological advancements promise significant benefits, they also pose profound challenges to transparency, fairness, and the protection of consumer rights. Among the most contentious aspects of algorithm-driven practices are dynamic pricing and behavioral manipulation. These practices have redefined the interactions between businesses and consumers, often tipping the scales in favor of companies while leaving consumers vulnerable to exploitation. The lack of transparency in these processes has

led to growing concerns about ethical practices and has necessitated legal scrutiny to strike a balance between innovation and consumer protection.[22]

Dynamic Pricing and Its Discontents

Dynamic pricing, a strategy where prices fluctuate based on variables such as demand, supply and consumer behavior, has emerged as a hallmark of AI-driven commerce. Businesses argue that this pricing model allows for efficient resource allocation and reflects real-time market conditions. However, critics contend that it often results in discriminatory practices, undermining the principle of fairness in trade.

The case of ***Federation of Hotels & Restaurants Association of India v. UOI***[23] illustrates the potential pitfalls of dynamic pricing. In this case, the court examined complaints regarding arbitrary pricing practices on online booking platforms. The decision highlighted the need for transparency in pricing mechanisms, emphasizing that consumers should not be left in the dark about the criteria influencing price variations. While businesses may view dynamic pricing as a legitimate strategy to maximize profits, the opacity of these algorithms often leads to consumer distrust.

Behavioral Manipulation and Consumer Vulnerability

Personalized marketing, powered by AI algorithms, has revolutionized advertising by enabling businesses to deliver targeted content based on consumer preferences and behavior. On the surface, this personalization enhances user experience, ensuring that consumers are presented with products and services aligned with their interests. However, the darker side of this innovation lies in its potential for behavioral manipulation.

Behavioral manipulation occurs when algorithms exploit psychological vulnerabilities to influence consumer decisions. For instance, algorithms may capitalize on an individual's browsing history, purchase habits, or even emotional states to prompt impulsive buying. This raises ethical questions about

the boundaries between marketing and manipulation. The case of ***Google India Pvt. Ltd. v. Vishakha Industries***[24] serves as a pertinent example. The court in this case scrutinized the responsibilities of platforms in ensuring that advertisements do not exploit consumers. While the decision primarily focused on traditional advertising, its implications extend to algorithm-driven personalized marketing, highlighting the need for accountability in the digital age.

Legal and Regulatory Considerations

The intersection of algorithm-driven practices and consumer protection has prompted significant legal and regulatory debates. The lack of transparency in AI algorithms is a critical issue, as consumers are often unaware of how their data is used or how decisions are made. The ***K.S. Puttaswamy v. UOI***[25] judgment, which recognized the right to privacy as a fundamental right, underscores the importance of safeguarding consumer data. This decision has implications for algorithm-driven practices, as it necessitates greater accountability from businesses in their use of consumer data.

Cybersecurity Threats in a Digital Economy

As the global economy becomes increasingly digital, reliance on online platforms for transactions, communication, and services has surged. While digital platforms offer convenience and efficiency, they also expose consumers to a growing array of cybersecurity threats. Among the most prominent are data breaches, phishing scams and ransomware attacks, all of which erode trust in digital ecosystems and underscore the urgent need for robust cybersecurity measures.

Consclusion

The study of consumer protection laws in the context of the digital economy reveals a complex interplay between technological innovation, globalization, and legal frameworks. The transformation of commerce through digital platforms has provided unprecedented convenience and accessibility, empowering consumers with a vast array of choices. However, these advancements have also exposed consumers to

significant vulnerabilities, including data breaches, deceptive practices, and jurisdictional challenges in cross-border transactions. The **Consumer Protection Act, 2019**, represents a landmark effort by the Indian government to modernize consumer protection and adapt to the rapidly evolving digital landscape. While this legislative reform addresses many contemporary issues, it also reveals gaps that must be filled through targeted policies, international collaboration, and continuous innovation.

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